



# Audit Report



OIG-17-055

TERRORIST FINANCING/MONEY LAUNDERING

FinCEN's 314 Information Sharing Programs Are Useful But  
Need FinCEN's Attention

September 18, 2017

Office of  
Inspector General

Department of the Treasury

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## Abbreviations

BSA	Bank Secrecy Act
FinCEN	Financial Crimes Enforcement Network
FAQ	Frequently Asked Questions
JAMES	Joint Audit Management Enterprise System
LEA	Law Enforcement Agency
OIG	Office of Inspector General

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OMB	Office of Management and Budget
SISS	Secure Information Sharing System
Treasury	Department of the Treasury

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*The Department of the Treasury  
Office of Inspector General*

September 18, 2017

Jamal El-Hindi, Acting Director  
Financial Crimes Enforcement Network

This report presents the results of our audit of the Financial Crimes Enforcement Network's (FinCEN) information sharing with other Federal agencies and financial institutions in accordance with information sharing procedures under Title III, Section 314, of the USA PATRIOT Act<sup>1</sup> (hereinafter Section 314). FinCEN administers the Bank Secrecy Act (BSA), which established a framework to combat criminal use of the financial system.<sup>2</sup> The USA PATRIOT Act amended BSA to focus on additional financial industry sectors and the financing of terrorism.

Section 314 created two programs to facilitate the sharing of information about financial crimes between government agencies and financial institutions. Section 314(a) requires financial institutions to search their records to identify and report to FinCEN information regarding a particular subject suspected of engaging in terrorist acts or money laundering activities. Section 314(b) provides for the voluntary sharing of information among financial institutions to identify and report activities that may involve terrorist acts or money laundering.

The objective of this audit was to determine the extent to which information sharing is occurring among the government and financial institutions. To accomplish our objective, we reviewed applicable program documentation and interviewed FinCEN program officials, Federal bank regulatory agency officials, and Federal law

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<sup>1</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56, 115 Stat. 272 through 402 (2001) (USA PATRIOT Act). Title III of the USA PATRIOT Act is separately entitled "International Money Laundering and Anti-Terrorist Financing Act of 2001." Title III contains the majority of the USA PATRIOT Act's anti-money laundering and anti-terrorist financing provisions.

<sup>2</sup> Public Law 91-508 (October 26, 1970).

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enforcement agency officials regarding the Section 314 programs. We conducted the majority of our fieldwork from December 2012 through October 2013 and performed additional procedures to update information as of December 2015. Subsequent to our fieldwork and prior to the issuance of our report, in August 2016, FinCEN officials reported to us that they took steps to improve the 314 programs. Appendix 1 provides a more detailed description of our audit objective, scope, and methodology.

## Results in Brief

At the time of our audit, more than 22,000 financial institutions had participated in the Section 314(a) program.<sup>3</sup> A majority of the law enforcement agencies' (LEA) program users we interviewed stated that FinCEN's Section 314(a) program helped law enforcement agencies by locating financial assets owned by subjects of terrorism and money-laundering investigations and by identifying recent transactions that those subjects made. However, some users suggested that FinCEN could make enhancements to the program that would provide more information to assist in investigations, with subpoena preparation, or with both of these. During our fieldwork, we shared this information with FinCEN officials.

We noted that FinCEN did not require financial institutions to provide all information set forth by its regulations.<sup>4</sup> FinCEN exercised an exemption to its regulations and instructed institutions to respond only if the name(s) supplied by a LEA matched the name(s) on an account or a transaction, and to provide a point of contact at the financial institution.<sup>5</sup> The instructions, in effect since November 2012, directed financial institutions to provide additional information in the comment field of their Section 314(a) response if they believe additional information is needed. We found that the

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<sup>3</sup> Subsequent to our audit fieldwork, the December 20, 2016 FinCEN 314(a) Fact Sheet reported there were more than 16,000 financial institutions participating in the 314(a) program.

<sup>4</sup> 31 C.F.R. 1010.520(b)(3)(ii) requires the financial institution to provide, for every match, the number of accounts for the subject or, in the case of a transaction, the date and type of each such transaction. Institutions must also provide the subject's social security number, taxpayer identification number, passport number, date of birth, address, or other similar identifying information provided by the individual, entity, or organization when such account was opened or transaction conducted.

<sup>5</sup> FinCENnews, "FinCEN to Reinstate USA PATRIOT Act Section 314(a) Information Requests," February 6, 2003.

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comments made by these institutions did not provide consistent information for law enforcement.

Feedback from LEA representatives regarding the Section 314(a) program was limited, and FinCEN's user survey needed improvement. FinCEN requested Section 314(a) program feedback from users 12 to 18 months after submission of a Section 314(a) request, too early in the process given some investigations continue for years. We also found that at least one of the questions posed in the survey was not well designed.

As another matter, we noted that financial institutions submitted duplicate responses to Section 314(a) inquiries<sup>6</sup> despite FinCEN's instructions prohibiting them. FinCEN revised the Section 314(a) module in a subsequent systems project completed in March 2014, which officials stated would prevent duplicate entries. We did not review these modifications, but they will be considered for future audit follow-up and work.

Regarding FinCEN's voluntary Section 314(b) program, Federal bank regulatory agency officials we interviewed stated that financial institutions were concerned about participating even after FinCEN issued guidance (including an explanation of safe harbor provisions) for the program in June 2009. We found that approximately 4,000 financial institutions had participated in the Section 314(b) program by December 2012, just 18 percent of the number that participated in the mandatory Section 314(a) program. To encourage greater participation, FinCEN issued a fact sheet about voluntary Section 314(b) information sharing in October 2013.<sup>7</sup> In December 2015, FinCEN reported that participation had increased to approximately 5,500 financial institutions.

We recommend that FinCEN (1) incorporate the user recommendations for enhancements in addition to the public comments received when evaluating its proposed renewal of the Section 314(a) program; (2) identify the impact on LEAs of exempting information from the responses to their 314(a) requests and determine if FinCEN should continue to exempt information set

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<sup>6</sup> FinCEN instructed financial institutions that responses submitted to FinCEN's Secure Information Sharing System (SISS) were to be entered once and could not be revised.

<sup>7</sup> In October 2013, FinCEN issued a 314(b) Fact Sheet, which provided a program overview and explained the benefits of participation, eligibility, the information that can be shared, and how to participate in the program. In November 2016, FinCEN issued a new 314(b) Fact Sheet which included revised instructions on submitting registrations electronically.

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forth in its regulations; (3) ensure the Section 314(a) survey questions are clarified to provide for consistent interpretation and responses about the program, and allow sufficient time for feedback in order to gain a more complete understanding of how Section 314(a) information benefits law enforcement cases; and (4) identify and address areas of concern regarding the Section 314(b) program and include these in guidance and outreach to encourage greater participation in the program.

In a written response which is included in its entirety as appendix 2, FinCEN management reported that it is making progress with the information sharing procedures throughout the 314 programs. FinCEN implemented enhancements in May 2016 and has committed to updating the Frequently Asked Questions (FAQ). FinCEN management reported that in September 2016, it clarified its Section 314(a) survey questions for law enforcement and has implemented a minimum waiting period of 18 months before surveying law enforcement. Finally, FinCEN issued a 314(b) Fact Sheet in November 2016 to address remaining areas of concern among financial institutions. FinCEN's management response meets the intent of our recommendations, and is summarized in the recommendation sections of this report. FinCEN will need to record the estimated date for completing its planned corrective actions in the Joint Audit Management Enterprise System (JAMES), Treasury's audit recommendation tracking system.

## Background

FinCEN implemented the Section 314(a) program on September 26, 2002. Under Section 314(a), FinCEN obtains for Federal, State, local, and foreign LEAs information from financial institutions to locate accounts and transactions of persons who may be involved in terrorism or significant money laundering transactions.<sup>8</sup>

To ensure that Section 314(a) requests are used only for appropriate cases, FinCEN requires LEA requesters to provide the following assurances: the request has been subject to appropriate scrutiny at the LEA, the matter under investigation is significant,

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<sup>8</sup> The requesting LEA determines if an investigation is significant based upon suspected monetary amounts; criminal organization involvement; multi-regional and/or cross border implications; potential multi-agency task force involvement; or importance of the investigation to the requesting agency.

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and the agency has exhausted all other means of obtaining the information being requested. The requester must provide identifiers for a suspect, such as date of birth, address, and social security number, which would allow a financial institution to differentiate between common or similar names.

FinCEN's Section 314 program office reviews and approves requests, then notifies LEA requesters, via email, of the date when the information will be made available to the financial institutions via the Section 314(a) Secure Information Sharing System (SISS).<sup>9</sup> The financial institutions must query their records<sup>10</sup> for data matches, including accounts maintained by the subject during the preceding 12 months and transactions conducted within the last 6 months. The financial institutions have 2 weeks from the date the case is posted on SISS to report any matches between the subject's name and other identifying information, including any accounts or transactions recorded by the financial institution. If no matches are found, the financial institution is not required to respond. After 2 weeks, FinCEN compiles all responses from the financial institutions and forwards them to the 314(a) LEA requesters. Subsequent to our field work and prior to the issuance of our report, according to FinCEN, as a result of an IT enhancement to the 314(a) Program, starting in May 2016 any positive responses posted by the financial institutions are sent to LEA requesters by email each night.

During fiscal years 2010 through 2012, FinCEN accepted and posted 711 (95 percent) of the 745 Section 314(a) requests submitted by law enforcement. FinCEN rejected 34 requests (5 percent) after LEAs failed to respond to FinCEN's requests for more information. The 711 approved requests resulted in more than 50,000 matches and contained over 8,500 subjects of interest.

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<sup>9</sup> A secure website maintained by FinCEN that can only be accessed by the financial institutions' designated Section 314(a) points of contact who receive biweekly e-mail notifications about new information available on the SISS web site for their review. As of August 2016, Section 314(b) points of contact could use SISS.

<sup>10</sup> Financial institutions must review deposit accounts; funds transfers; sales of monetary instruments; loans; accounts to purchase, sell, lend, hold, or maintain custody of securities, commodity futures, options, or other derivatives; and safe-deposit boxes.



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More than 2,400 unique financial institutions responded to these requests.

The Section 314(b) program, also launched in September 2002, allows two or more financial institutions, under the protection of safe harbor from liability, to share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist or money-laundering activities. A financial institution that intends to share information must complete several steps to be granted the benefit of safe harbor provisions.<sup>11</sup>

In June 2009 and October 2013, FinCEN issued guidance clarifying that financial institutions participating in the Section 314(b) program may share information relating to transactions they suspect may involve the proceeds of one or more specified unlawful activities.<sup>12</sup> FinCEN specified that program participants remain within the protection of the Section 314(b) safe harbor from liability.

Some financial institutions have additional reporting responsibilities. If a financial institution knows, suspects, or has reason to suspect that an individual, entity, or organization is involved in, or may be involved in terrorist activity or money laundering, as a result of information shared through the Section 314(b) program, it must also submit a Suspicious Activity Report to FinCEN.

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<sup>11</sup> 31 CFR 1010.540, "Voluntary information sharing among financial institutions." Financial Institutions must: (1) submit a notice to FinCEN of intent to share information; (2) take reasonable steps to verify that the other financial institution with which it intends to share information has submitted to FinCEN a notice to share information; (3) ensure that information received by a financial institution shall not be used for any purpose other than identifying and, where appropriate, reporting on money laundering or terrorist activities and determining whether to establish or maintain an account or to engage in a transaction or assisting the financial institution in complying with any requirement of 31 CFR Chapter X; and (4) maintain adequate procedures to protect the security and confidentiality of such information.

<sup>12</sup> The unlawful activities are listed in 18 U.S.C. §1956 and §1957. They include fraudulent and criminal activities, such as a violation of the Controlled Substances Act (21 U.S.C. §848), the smuggling of goods into the United States, and embezzlement.

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## Audit Results

### Finding 1      **FinCEN's Section 314(a) Program Could Be Enhanced**

Under Section 314(a) LEAs, through FinCEN, can request from financial institutions account and transaction information related to individuals, entities, and organizations suspected of terrorist financing and significant money laundering activities.

During fiscal years 2010 through 2012, a total of 43 LEAs submitted 745 individual Section 314(a) requests. The following six LEAs submitted 585 (79 percent) of those requests, and we interviewed representatives from each of these LEAs to ask about the usefulness of the Section 314(a) program:

- United States Drug Enforcement Administration (two field offices)
- Federal Bureau of Investigation (three field offices)
- United States Immigration and Customs Enforcement (two field offices)
- Internal Revenue Service Criminal Investigation (three field offices)
- Offices of the United States Attorneys (two field offices)
- United States Secret Service (one location)

#### Positive Comments on the Section 314(a) Program

Representatives of the six LEAs we interviewed reported that FinCEN's Section 314(a) information was very helpful during investigations and that they were satisfied with the way FinCEN operated the program. LEA representatives told us that, in almost all cases, financial institutions returned responses within the 2 week time limit, and one representative expected the turnaround time to be a lot longer. Many of the LEA representatives said that the responses were accurate even though some included false-

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positive matches, such as a same name but different social security number.

### Suggested Enhancements to the Section 314(a) Program

Although most LEA representatives we interviewed found the Section 314(a) program helpful, they suggested the following additional information be provided to support their investigation and subpoena preparation:

- transactions made by the subject or accounts held at the financial institution;
- status of an account identified by the request, such as active or closed;
- point of contact to coordinate the delivery of subpoenas to the institution for specific customer and account information, if different than the one provided by the financial institutions;
- identifier(s) that led to the match, such as the name only, social security number only, or both name and social security number.

In addition, one representative of a LEA preferred that comment responses by financial institutions be provided in a consistent format for ease of review.

LEAs stated that the enhancements listed above would be helpful to law enforcement in several ways. Law enforcement users explained that they need to know as many details as possible about a match before issuing a subpoena. For example, if a LEA has a subpoena issued for a subject's account, and a match is made because of a transaction, the LEA must generate another subpoena specifically for that transaction. This causes unnecessary delays and additional time spent by the LEA and the financial institution. When a financial institution responds with only a name, a false positive could result. According to one LEA, the possibility of identifying subjects with the same name but a different social security number, for example, could indicate a subject is in the process of changing their identity.

FinCEN should solicit recommendations for enhancement from its Section 314(a) users. In support of making government work more efficiently and in following Office of Management and Budget (OMB) Memorandum M-11-31, *Delivering an Efficient, Effective, and Accountable Government* which provides that "critical to

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success is a culture where agencies constantly ask, and try to answer, questions that help them find, sustain and spread effective and efficient programs, practices, and policies that support the agency's mission", these recommendations should be evaluated and implemented as appropriate.

We provided information gained from LEA interviews to FinCEN's former director. In December 2015, we met with FinCEN officials to determine whether FinCEN addressed enhancements to the Section 314(a) program that had been suggested by law enforcement. We found that FinCEN officials had not implemented changes to the program to address any of the suggested enhancements because they believed the financial institutions could provide requested information in the comments to their responses. In February 2016, FinCEN issued a notice in the Federal Register for comment to renew the Section 314(a) program without change.<sup>13</sup>

## Recommendation

We recommend that the Director of FinCEN incorporate the user recommendations for enhancements in addition to the public comments received when evaluating its proposed renewal of the Section 314(a) program.

### Management Response

Management concurs with the recommendation. FinCEN stated that it had implemented a number of information technology enhancements in May 2016 that improved the usability of the 314 program interface. These enhancements included the development of a new user-friendly system that includes many of the features recommended by the Bank Secrecy Act Advisory Group<sup>14</sup> and a

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<sup>13</sup> Federal Register / Vol. 81, No. 39 / Monday, February 29, 2016 / Notices; Proposed Collection; Comment Request; Renewal Without Change of the Requirement for Information Sharing Between Government Agencies and Financial Institutions. As of this report date, no comments to the notice were posted on FinCEN's web site.

<sup>14</sup> The Bank Secrecy Act Advisory Group includes officials from Federal and State government units, banking, and other private sector enterprises and is the means by which the Treasury receives advice on the operations of the Bank Secrecy Act. As chair of this group, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the group for review, analysis, and discussion.

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process that allows law enforcement to receive the positive results from their 314(a) case within 24 hours.

OIG Comment

FinCEN's response meets the intent of our recommendation. We believe that FinCEN's reported enhancements along with those discussed in FinCEN's response to Recommendation 2 below demonstrate FinCEN's commitment to incorporate user recommendations for future enhancements to the 314(a) program. FinCEN will need to record its corrective actions in JAMES.

**Finding 2**

**FinCEN Does Not Require Financial Institutions To Provide All Information Set Forth In Its Regulation**

FinCEN instructions for responding to Section 314(a) requests do not require financial institutions to provide all information set forth in its regulation.<sup>15</sup> FinCEN has chosen to exempt the requirement that financial institutions report the number of accounts for the subject or, in the case of a transaction, the date and type of each such transaction, and any other identifying information at the time the account was opened or transaction was conducted as stated in its regulations.<sup>16</sup>

According to FinCEN's November 2012 instructions, financial institutions are only required to indicate the subjects they have a match for and to enter a comment, if needed, in their responses to requests using SISS. FinCEN originally modified the program in 2003 to reduce the burden on financial institutions. Subsequent to our fieldwork and prior to the issuance of our report, in August 2016 a FinCEN official stated that the exemption was utilized to expedite the response to LEAs, and FinCEN would consider whether requiring the additional information would be more beneficial, given the cost/benefit factors.

We identified in our interviews, that the exempted information would be beneficial. Five LEA representatives we interviewed stated that it would be helpful in their investigations and subpoena preparation if the financial institutions supplied all the information

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<sup>15</sup> 31 C.F.R. 1010.520(b)(3)(ii) "*Information sharing between government agencies and financial institutions.*"

<sup>16</sup> FinCEN used its exemption authority set forth in 31 U.S.C. §5318(a)(7) to require the financial institutions to only report whether it has a match to the 314(a) LEA request.

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set forth in the regulation and in a consistent format. For example, one law enforcement agency official stated that an agency may subpoena an account only to find out the positive match was a transaction, resulting in a new subpoena needing to be prepared to obtain any related information about the subject. The official stated that this is a waste of time for both the law enforcement agency and the bank. In this case, if the financial institution was required to provide all information set forth in the bureau's regulations, the process would have been more efficient.

Regarding the burden to financial institutions, two Federal bank regulatory agencies we interviewed stated that providing information set forth by FinCEN regulations would not be a burden to financial institutions under their supervision.

As of this report date, no changes had been made to the Section 314(a) Instructions requiring financial institutions to provide all information set forth in FinCEN's regulation. FinCEN officials stated that financial institutions have the ability to provide comments related to the match, and LEAs eventually receive underlying details related to the match through their own legal means.

OMB's M-11-31 discussed previously states that one of the objectives of federal performance management is effective government, which requires practices, programs, and polices which improve the outcomes they are trying to achieve. FinCEN's policy to exempt financial institutions from providing information that could be beneficial to LEAs may limit the potential benefits of the Section 314(a) program to its users.

We believe FinCEN should consider the usefulness to law enforcement of the exempted information as it works to improve the 314(a) program.

## **Recommendation**

We recommend that the Director of FinCEN identify the impact on LEAs of exempting information from the responses to their 314(a) requests and determine if FinCEN should continue to exempt information set forth in its regulations.

### Management Response

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Management concurs with the recommendation. FinCEN stated that when it first implemented the 314(a) authorities, it was determined that collecting the full extent of information under the regulation resulted in unnecessary burdens on financial institutions and unnecessary delays to law enforcement for information they would be able to collect by following up with a subpoena. According to FinCEN's management response, FinCEN will update the 314(a) FAQs notifying financial institutions that in addition to providing confirmation of a match on a particular named subject of a 314(a) request, a financial institution may also provide the specific information outlined in 31 CFR 1010.520(b)(3)(ii) in the comment section of their 314(a) response, because such information is beneficial to law enforcement.

OIG Comment

FinCEN's decision to notify financial institutions through FAQs that additional specific information may be provided when responding to a 314(a) request meets the intent of our recommendation. FinCEN will need to record the estimated date for completing its planned corrective actions in JAMES.

**Finding 3**

**FinCEN Needs to Improve Requests for Section 314(a) User Feedback**

FinCEN requests feedback data from LEAs 12 to 18 months after submission of a Section 314(a) request. From that information, FinCEN compiles the number of new accounts and transactions identified by the financial institutions, the percentage of Section 314(a) requests contributing to arrests or indictments, and the number of follow-up actions taken by LEAs with financial institutions on any newly discovered account or transaction information.

FinCEN solicited feedback on the 503 requests processed from October 2009 through December 2011 and had received information on only 165 of them (33 percent) by the end of August 2013.

Our interviews with representatives from six LEAs revealed weaknesses in FinCEN's survey process. Two LEAs stated that some investigations take years to complete, so the results are not always known when FinCEN requests feedback. Another LEA stated that the number of indictments resulting from a Section

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314(a) response is difficult to quantify because multiple sources of information can aid in investigations that lead to indictments.

According to OMB's Office of Information and Regulatory Affairs, "*Questions and Answers When Designing Surveys For Information Collections*," which was originally published in January 2006 and modified in October 2016, agencies need to use survey questions that will elicit the appropriate information from respondents to fill the agencies' data needs. Agencies should use techniques to test the questions that will ensure that the questions they develop provide the information they need and have adequate statistical reliability.

In this regard, if FinCEN sought feedback at a later time to allow LEA cases to be settled, it would likely gather a higher percentage of meaningful responses.

We also found that FinCEN needs to revise at least one of the six survey questions to improve clarity and ensure the consistency of responses from Section 314(a) users. This one question reads, "Did any newly-discovered account(s) or transaction(s) assist with obtaining a complaint, indictment, or arrest in this case? If yes, how many?" The wording of this question does not make clear whether FinCEN wants the response to represent the number of newly discovered accounts and transactions or the number of complaints, indictments, and arrests. Moreover, this question does not specify whether categorical or cumulative totals should be provided.

We asked FinCEN to explain how the multiple, varied responses to this particular survey question are tabulated. FinCEN replied that it simply records the numbers provided by LEAs on the feedback form and that the intent of the question is to provide general information on whether the Section 314(a) information assisted law enforcement in making arrests or indictments. We believe FinCEN should clarify this question to ensure it receives the intended information. Responses to such an ambiguous question cannot be considered reliable and conclusive.

As of December 2015, no changes had been made to the Section 314(a) feedback form or the timeline for requesting feedback. It is important for FinCEN to uphold its performance improvement responsibilities of conducting more comprehensive data-driven reviews, as discussed in Finding 1, which guide decisions and



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actions to improve performance outcomes for the Section 314(a) program.

## **Recommendation**

We recommend that the Director of FinCEN ensure the Section 314(a) survey questions are clarified to provide for consistent interpretation and responses about the program. Sufficient time should be allowed for feedback in order to gain a more complete understanding of how Section 314(a) information benefits law enforcement cases.

### Management Response

Management concurs with the recommendation. According to FinCEN both recommendations were implemented in September 2016. FinCEN has implemented a new standard of waiting a minimum of 18 months before feedback is requested from law enforcement in hopes of gathering a higher percentage of meaningful responses.

### OIG Comment

Management's response meets the intent of our recommendation. According to FinCEN, at the conclusion of our audit, it was revising the feedback form to improve the clarity of the questions being asked. FinCEN will need to record its corrective actions in JAMES.

## **Finding 4**

### **FinCEN Should Continue to Address Concerns Over the Section 314(b) Program**

Federal bank regulatory agencies stated that some financial institutions were concerned about participating in the Section 314(b) program because they did not fully understand it. This response comes even though FinCEN issued guidance to financial institutions in June 2009 intended to clarify the scope of permissible information sharing covered by the Section 314(b) safe harbor. Section 314(b) provides a safe harbor from liability for two or more financial institutions that share information with one another regarding individuals, entities, organizations, and countries suspected of possible terrorist acts or money laundering.

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FinCEN reported that, as of December 2012, approximately 4,000 financial institutions had participated in the voluntary Section 314(b) program, while more than 22,000 financial institutions had participated in the mandatory Section 314(a) program. According to two Federal bank regulatory agency officials we interviewed, the variance in participation may be attributed to the following reasons:

- Financial institutions are concerned about meeting the precise requirements of the safe harbor provision, which protects them from liability resulting from the voluntary sharing of information regarding terrorism and money laundering.
- Financial institutions are concerned about complying with financial privacy laws that limit the disclosure of financial records or information identified with a particular customer or identifiable as being derived from the financial records of a particular customer.
- Some small banks are under the impression that other financial institutions have an obligation to always share information, despite the fact that institutions are not bound to participate in all circumstances and have the option of opting not to respond to a particular request.

In addition, according to one Federal bank regulatory agency official, some financial institutions expressed concern that participating in the program could put them at a competitive disadvantage. A regulator explained that the information shared through the program with other institutions about a customer's financial activity could result in another institution pricing certain products and services to attract the customer's business.

Unlike FinCEN's requests for information from LEAs regarding the usefulness of the 314(a) program used to perform data-driven progress reviews, requests are not made of financial institutions regarding the usefulness of the 314(b) program to contribute to the accomplishment of effective information sharing among financial institutions.

FinCEN issued clarifying guidance regarding Section 314(b) of the USA PATRIOT Act stating that a financial institution participating in the program may share information relating to transactions that the institution suspects may involve the proceeds of one or more specified unlawful activities for the purpose of identifying and, where appropriate, reporting possible money laundering or terrorist

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activity.<sup>17</sup> FinCEN should continue to promote greater participation in the Section 314(b) program so that the benefits of sharing information to support anti-money laundering and combatting terrorist financing activities are encouraged.

We provided FinCEN's former director with the information obtained during our interviews of Federal bank regulatory agency officials. To promote information sharing through the Section 314(b) program, FinCEN issued a fact sheet in October 2013 to explain program benefits, eligibility requirements, the types of information that can be shared, and the procedures necessary to participate in the program.<sup>18</sup> By December 2015, participation in the Section 314(b) program had increased to almost 5,500 users. FinCEN attributed the 38 percent increase from December 2012 to the Section 314(b) Fact Sheet and to the former FinCEN director's speeches to the financial industry promoting the program.

As of December 2015, FinCEN had not implemented any changes to the Section 314(b) program. According to FinCEN officials, some of the proposed changes would require a legislative change to update safe harbor provisions and others would be addressed with the Section 314(b) Fact Sheet.

Subsequent to the completion of our field work and prior to the issuance of our report, FinCEN officials reported that as of August 22, 2016, they implemented Information Technology enhancements to the 314(b) Program. These enhancements included the integration of the program into SISS, an improved registration and renewal process for participation in the program, and ability to search participating financial institutions.

## Recommendation

We recommend that the Director of FinCEN identify and address remaining areas of concern regarding the Section 314(b) program

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<sup>17</sup> FinCEN, *Guidance on the Scope of Permissible Information Sharing Covered by Section 314(b) Safe Harbor of the USA PATRIOT Act*; (FIN-2009-G002; issued June 16, 2009).

<sup>18</sup> In November 2016, FinCEN replaced the October 2013 314(b) Fact Sheet, which included an update to program registration. This is available at <https://www.fincen.gov/sites/default/files/shared/314bfactsheet.pdf>

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and include these in guidance and outreach to encourage greater participation in the program.

### Management Response

Management concurs with the recommendation. According to FinCEN, a Fact Sheet on the 314(b) process was issued in November 2016. FinCEN understands the financial institutions' request for strengthening safe harbor protections which would require legislative changes to implement.

### OIG Comment

FinCEN's response meets the intent of our recommendation. The November 2016 Section 314(b) Fact Sheet is used by FinCEN as a means of outreach to the financial institutions. It provides many of the benefits of participating in the program. It details who is eligible to participate, what information can be shared, how financial institutions participate so they may benefit from safe harbor protection, as well as the sharing and safeguarding of information. FinCEN will need to record its corrective actions in JAMES.

## **Other Matter**

### **Duplicate Section 314(a) Responses**

During our review of 76 of the 711 approved Section 314(a) requests and related responses, we discovered 6 duplicate responses by financial institutions, with at least one instance occurring in each year of the 3-year period under audit. Financial institutions submit their responses to Section 314(a) requests through SISS.

FinCEN's instructions on SISS remind financial institutions that, once they submit a positive response, they may not add to or modify their submission using SISS. Accordingly, financial institutions are to submit only one response for each 314(a) request.

In June 2013, FinCEN told us that it modified its existing database system controls to prevent duplicative submissions. Afterward, FinCEN created a permanent solution as part of the second release of the Section 314(a) module for its BSA IT Modernization Program, in the Broker Information Exchange project, completed in

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March 2014. Subsequent to the completion of our field work and prior to the issuance of our report, FinCEN told us that after a point of contact submits a response to a transmission, that transmission is locked in SISS so that no additional responses may be entered by the financial institution. We plan to review FinCEN's efforts during future BSA IT Modernization audits to ensure duplication of requests are resolved.

\* \* \* \* \*

We appreciate the cooperation and courtesies extended to our staff during the audit. If you wish to discuss the report, you may contact me at (617) 223-8638 or Maryann Costello, Audit Manager, at (617) 223-8642. Major contributors to this report are listed in appendix 3. A distribution for this report is provided as appendix 4.

/s/  
Sharon Torosian  
Audit Director

The objective of this audit was to determine the extent to which information sharing is occurring among the government and financial institutions.

To accomplish our audit objective, we interviewed officials from the Financial Crimes Enforcement Network's (FinCEN) 314 program office, law enforcement agency (LEA) representatives who used the Section 314(a) program during the period October 2009 through September 2012, and Federal bank regulatory agencies involved in ensuring participant compliance with the Section 314(b) program requirements. We also reviewed applicable program documentation, procedures, and databases.

At FinCEN, we interviewed officials from the following divisions that were in place during the time of our audit:<sup>19</sup>

- Office of Special Program Development
- Analysis and Liaison Division
- Office of Regulatory Policy, Policy Division
- Office of Compliance and Enforcement, Enforcement Division
- Technology Solutions and Services Division

External to FinCEN, we interviewed representatives of the following six Federal LEAs:

- United States Drug Enforcement Administration (two field offices)
- Federal Bureau of Investigation (three field offices)
- United States Immigration and Customs Enforcement (two field offices)
- Internal Revenue Service Criminal Investigation (three field offices)
- Offices of the United States Attorneys (two field offices)
- United States Secret Service (one location)

We interviewed officials from four Federal bank regulatory agencies to gain insight about Section 314(b) compliance:

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<sup>19</sup> FinCEN implemented a reorganization on June 24, 2013, that realigned employees by job function rather than the stakeholders they serve.

- Federal Deposit Insurance Corporation
- Federal Reserve Board
- National Credit Union Association
- Office of the Comptroller of the Currency

We reviewed prior Department of the Treasury (Treasury) Office of Inspector General and Government Accountability Office reports, Treasury Orders and Directives, legislation, and Federal regulations pertaining to the Section 314 programs. We also reviewed FinCEN's Standard Operating Procedures for reviewing Section 314(a) requests made by LEAs, international law enforcement entities, and units from Treasury and FinCEN.

We reviewed guidance issued to financial institutions on how to respond to Section 314(a) requests using the Secure Information Sharing System. We also reviewed instructions for financial institutions on how to register for participation in the Section 314(b) program. In addition, we reviewed FinCEN's procedures for processing Section 314(b) program registration.

We reviewed a listing of the requests received and approved by FinCEN during our audit period and identified the users of the Section 314(a) program. We also determined the number of financial institutions that registered to participate in the Section 314(b) program for fiscal years 2010, 2011, and 2012.

To determine adherence with 314(a) program guidelines and requirements, we selected a stratified non-statistical<sup>20</sup> sample of 76 of the 711 Section 314(a) case files for fiscal years 2010 through 2012. Our sample was stratified to capture case files of the top six law enforcement agencies that submitted 79 percent of all Section 314(a) requests and all other domestic LEA users of the program. For the 76 Section 314(a) case files reviewed, we determined the accuracy of data in the FinCEN database by comparing the number of subjects, financial institutions responding, and matches from the Section 314(a) case files to those fields in the FinCEN database.<sup>21</sup> We evaluated FinCEN's monitoring of financial institution

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<sup>20</sup> By using a non-statistical sample, we are not projecting the results of the intended population.

<sup>21</sup> The FinCEN database is part of FinCEN's General Support System, which supports efforts to provide a multisource intelligence and analytical network to support the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes, as well as other domestic and international criminal, tax, and regulatory matters.

compliance with Section 314(a) requests and evaluated controls over the tracking of Section 314(a) requests to ensure proper review of these by FinCEN and distribution to the financial institutions.

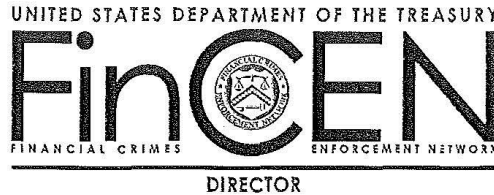
Additionally, we assessed FinCEN's Section 314(b) outreach efforts and the financial institutions' level of participation.

We conducted the majority of our fieldwork from December 2012 through October 2013, and performed additional procedures to update information as of December 2015. Subsequent to our fieldwork and prior to the issuance of our report, in August 2016, FinCEN officials reported to us they took steps to improve the 314 programs. We did not perform additional fieldwork to verify these actions.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



Appendix 2  
Management Response



MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL HARKER

FROM: Jamal El-Hindi *JEH*  
Acting Director  
Financial Crimes Enforcement Network

SUBJECT: *Management Response to the Draft Report – FinCEN USA PATRIOT Act Information-Sharing Procedures*

Thank you for the opportunity to review the draft report on the Financial Crimes Enforcement Network's (FinCEN) USA PATRIOT Act Information-Sharing Procedures. We are pleased that we are making progress with the information sharing procedures through the 314 programs. In efforts to strengthen our programs, FinCEN has implemented a number of information technology enhancements in May 2016 that improved the usability of the 314 program interface. The most notable enhancement is the development of a new, user-friendly system that includes many of the features recommended by the Bank Secrecy Act Advisory Group. Another process was implemented that allows law enforcement to receive the positive results from their 314(a) case within 24 hours.

Furthermore, FinCEN's implementation of the information sharing procedures authorized under the 314(a) regulation is very valuable to law enforcement and balances the need to provide information to law enforcement expeditiously while at the same time attempts to avoid undue burden on the financial industry. When FinCEN first implemented the 314(a) authorities, it was determined that collecting the full extent of information under the regulation resulted in unnecessary burdens on financial institutions and unnecessary delays to law enforcement for information they would be able to collect by following up with a subpoena (in such cases, law enforcement would be able to obtain more than what the 314(a) regulation allows). Given the OIG recommendation in this report, FinCEN will update the Frequently Asked Questions (FAQs) to indicate to financial institutions that they are allowed to provide certain additional information in the comment section for the benefit of law enforcement. This approach should address law enforcement's concerns by providing additional information to law enforcement quickly, without increasing the burden on financial intuitions.

If you have any questions or need additional information, please contact Becky Martin, Acting Chief Financial Officer, Office of Financial Management, on 703-905-3860.

Attachment:  
FinCEN Corrective Actions

[www.fincen.gov](http://www.fincen.gov)

Appendix 2  
Management Response

Page 2

FinCEN Corrective Actions

1. Recommendation 1: Incorporate the user recommendations for enhancements in addition to the public comments received when evaluating its proposed renewal of the Section 314(a) program.

FinCEN Response: Concur. As mentioned previously, FinCEN implemented a number of information technology enhancements in May 2016 that improved the usability of the 314 program interface.

Status: Closed

2. Recommendation 2: Identify the impact on LEAs of exempting information from the responses to their 314(a) requests and determine if FinCEN should continue to exempt information set forth in its regulations.

Management Response: Concur: FinCEN will update the 314(a) Frequently Asked Questions (FAQs) indicating to financial institutions that in addition to providing confirmation of a match on a particular named subject of a 314(a) request, a financial institution may also provide the specific information as outlined in 31 CFR 1010.520(b)(3)(ii), in the comment section of their response, as such information is beneficial to law enforcement. In the FAQ, FinCEN will reiterate to financial institutions that reporting information pursuant to 31 CFR 1010.520(b)(3)(ii) is in compliance with the Right to Financial Privacy Act and the Gramm-Leach Bliley Act.

Status: Open. Estimated completion date December 31, 2017

3. Recommendation 3: Ensure the Section 314(a) survey questions are clarified to provide for consistent interpretation and responses about the program. Sufficient time should be allowed for feedback in order to gain a more complete understanding of how Section 314(a) information benefits law enforcement cases.

Management Response: Concur. Both of the recommendations were implemented in September 2016. FinCEN has implemented a new standard of waiting a minimum of 18 months before feedback is requested from law enforcement in hopes of gathering a higher percentage of meaningful responses.

Status: Closed.

4. Recommendation 4: Identify and address remaining areas of concern regarding the Section 314(b) program and include these in guidance and outreach to encourage greater participation in the program.

Management Response: Concur. FinCEN issued a Fact Sheet on the 314(b) process in November 2016. FinCEN understands the financial institutions' request to strengthening safe harbor protections and would require legislative change to implement.

Status: Closed.

Appendix 3  
Major Contributors to This Report

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Maryann Costello, Audit Manager  
Patrick Arnold, Auditor-In-Charge  
Kevin Guishard, Referencer

**The Department of the Treasury**

Deputy Secretary  
Under Secretary, Office of Terrorism and Financial Intelligence  
Office of Strategic Planning and Performance Improvement  
Office of the Deputy Chief Financial Officer, Risk and Control  
Group

**Financial Crimes Enforcement Network**

Acting Director  
OIG Audit Liaison

**Office of Management and Budget**

OIG Budget Examiner

**U.S. Senate**

Chairman and Ranking Member  
Committee on Banking, Housing, and Urban Affairs

Chairman and Ranking Member  
Committee on Finance

**U.S. House of Representatives**

Chairman and Ranking Member  
Committee on Financial Services



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**Gulf Coast Restoration Hotline** – Call toll free: 1-855-584.GULF (4853)

Email: [Hotline@oig.treas.gov](mailto:Hotline@oig.treas.gov)

Submit a complaint using our online form:

<https://www.treasury.gov/about/organizational-structure/ig/Pages/OigOnlineHotlineForm.aspx>