



# Department of the Treasury Financial Crimes Enforcement Network

February 6, 2003

## FREQUENTLY ASKED QUESTIONS (FAQs) CONCERNING THE 314(a) PROCESS

The Financial Crimes Enforcement Network (FinCEN), after meeting with federal law enforcement and other regulatory agencies, has developed the following guidance in question and answer format to assist financial institutions when responding to a 314(a) request. This guidance supersedes any prior FAQs that FinCEN has issued on this topic. The guidance complements, but does not replace, any instructions accompanying, or referenced in, a particular 314(a) request.

### **1. To what does the statutory term “section 314(a)” refer?**

The term “section 314(a)” refers to section 314(a) of the law Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107-56. In addition, the final rule implementing section 314 of the USA PATRIOT Act was issued by the Department of the Treasury on September 26, 2002, 67 Fed. Reg. 187 (2002).

### **2. How often will financial institutions receive 314(a) requests from FinCEN?**

Financial institutions should expect to receive batched 314(a) requests every two weeks in an electronic format or via facsimile transmission. However, if a particular 314(a) request relates to an emergency situation, then the 314(a) request will not be batched. In that case, the request will be sent out immediately.

### **3. How quickly must a financial institution respond to a 314(a) request?**

Financial institutions must begin searching their records immediately upon receiving a 314(a) request. If an institution receives a 314(a) request during non-business hours or during the weekend, it must commence its search the next business day. If a financial institution finds a match with a named subject, the match must be reported to FinCEN. Unless the instructions to a request state otherwise, financial institutions must complete their search on all the subjects listed in the 314(a) request and respond with any matches no later than fourteen (14) calendar days after receiving a 314(a) request.

**4. Is the search for accounts and transactions involving the named individual, entity or organization named in FinCEN's 314(a) request a one-time search or an ongoing search?**

Unless noted otherwise in the instructions to a 314(a) request, financial institutions are only required to conduct a one-time search of their records.

**5. What records should a financial institution search?**

Unless noted otherwise in the instructions to a 314(a) request, a financial institution is required to conduct a one-time search of the following records, whether or not they are kept electronically (subject to the limitations below):

- (1) deposit account records (e.g., DDA, checking/share drafts, savings, and certificates of deposit) to determine whether a named subject is or was an accountholder;
- (2) funds transfer records maintained pursuant to 31 CFR 103.33 to determine whether a named subject was an originator/transmitter of a funds transfer for which you were the originator/transmitter's financial institution, or a beneficiary/recipient of a funds transfer for which you were the beneficiary/recipient's financial institution;
- (3) records of the sale of monetary instruments (e.g., cashier's checks, money orders, or traveler's checks) maintained pursuant to 31 CFR 103.29 to determine whether a named subject purchased a monetary instrument;
- (4) loan records to determine whether a named subject is or was a borrower;
- (5) trust department account records to determine whether a named subject matches the name in which an account is titled;
- (6) records of accounts to purchase, sell, lend, hold, or maintain custody of securities to determine whether a named subject is or was an accountholder;
- (7) commodity futures, options, or other derivatives account records to determine whether a named subject is or was an accountholder; and
- (8) safe deposit box records to determine whether a named subject maintains or maintained, or has or had authorized access to, a safe deposit box, but only if such safe deposit box records are searchable electronically.

Any record described above that is not maintained in electronic form need only be searched if it is required to be kept under federal law or regulation.

**6. How far back does a financial institution need to search?**

Unless noted otherwise in the instructions to a 314(a) request, financial institutions are required to search their records for current accounts and accounts maintained by a named subject during

the preceding twelve (12) months, and transactions not linked to an account conducted by a named subject during the preceding six (6) months.

### **7. Does a financial institution need to conduct a manual search of its records?**

Unless noted otherwise in the instructions to a 314(a) request, and subject to the following exceptions, financial institutions are required to search all the records described in Q&A #5 whether they are maintained electronically or not. First, safe deposit records are only required to be searched if they are searchable electronically. Second, any record described in Q&A #5 not maintained in electronic form need only be searched if it is required to be kept under federal law or regulation.

### **8. What kinds of records are not required to be searched?**

Unless a record is described in Q&A #5, a financial institution need not search it. For example, a financial institution is not required to search the following:

- (1) checks processed through an account to determine whether a named subject was a payee of a check;
- (2) monetary instruments (e.g., cashier's checks, money orders, or traveler's checks) issued by the institution to determine whether a named subject was a payee of such an instrument;
- (3) signature cards to determine whether a named subject is a signatory to an account (unless such a search is the only method to confirm whether a named subject maintains an account, as described above); and,
- (4) reports (e.g., CTRs and SARs) that the institution previously filed with FinCEN.

### **9. The search parameters in this Q&A are narrower than what seems to be required under the regulation; is this intentional?**

Yes. In consultation with federal law enforcement and regulatory agencies, FinCEN purposely decided to narrow what would otherwise be required under a 314(a) request, in order to maximize the benefits and minimize the burdens associated with responding to such a request.

### **10. What should a financial institution do if it finds a match to a named subject?**

If a financial institution finds a match with a named subject, it should stop its search on that subject; the institution is not required to search its records further for other matches with that subject unless and until it has been contacted by the requesting federal law enforcement agency for additional information. If the 314(a) request contains multiple subjects, the financial institution must continue to search its records for an account or transaction matching any of the other named subjects. After it has completed its search on all the subjects listed in the 314(a) request, the institution must report any match to FinCEN by completing the Subject Information

Form (one form per request). The Subject Information Form is the means for conveying a 314(a) request and reporting matches to FinCEN. The Form only requires a financial institution to place an "X" next to the particular named subject for which a match was found, and to provide point-of-contact information. If the search does not uncover any matching account or transaction, the financial institution should not reply to the 314(a) request.

### **11. How should a financial institution report a match?**

The Subject Information Form containing any positive matches must be sent to FinCEN by electronic mail at [sys314a@fincen.treas.gov](mailto:sys314a@fincen.treas.gov), or if an institution does not have e-mail, by facsimile transmission at 703-905-3660. Responses must contain FinCEN's Tracking Number in the subject line of the e-mail or on the fax cover sheet. FinCEN's Tracking Number can be found in the upper right-hand corner of the Subject Information Form. No details need to be provided on the response to FinCEN other than the fact that a financial institution has a match on the particular named subject. A financial institution should not send any record of an account or a transaction (other than a report, as described above, notifying FinCEN of a match) when responding to a 314(a) request.

In its response, a financial institution must provide FinCEN with information identifying the point-of-contact at the institution in charge of the 314(a) search and the person who may be contacted by the requesting federal law enforcement agency for additional information. A financial institution should include each point-of-contact's:

- (1) name;
- (2) mailing address;
- (3) telephone number; and,
- (4) e-mail address (if any).

### **12. How close a match must a name be to a name on the 314(a) request in order to be considered a positive response or hit?**

If information relating to an account or a transaction matches only one portion of a name on the subject list, such as last name only, and none of the additional information provided on the subject corresponds to the account or transaction in question, an institution need not report this as a positive response.

### **13. What should a financial institution do if it does not find a match to a named subject?**

If a search does not uncover any matching account or transaction information, a financial institution should not report back to FinCEN.

### **14. What should a financial institution expect after submitting a 314(a) response to FinCEN?**

A financial institution that submits a positive 314(a) response to FinCEN concerning a subject will likely receive a Grand Jury subpoena. In certain cases, however, the financial institution

may receive a National Security Letter (a request from the FBI or other government authority for a matter relating to terrorism, see 12 U.S.C. 3414(a)(1)(C)) or an Administrative Summons (similar to an administrative subpoena, see 12 U.S.C. 3405). In the case of an Administrative Summons, customers must be afforded notice and opportunity for challenge, and the institution must obtain a certification of compliance with the Right to Financial Privacy Act, 12 U.S.C. 3401 et seq., from the law enforcement agency that issued the summons, before the institution may disclose a customer's records using this procedure. See 12 U.S.C. 3403(b) and 3405. The timing of the law enforcement response will vary on a case-by-case basis. As noted on the response form, the 314(a) response should provide specific instructions as to whom and where any follow-up from law enforcement should be addressed. The financial institution should also provide a contact name and number of the individual in charge of the 314(a) research.

**15. Is a financial institution required to close any accounts involving a 314(a) subject?**

No. A financial institution is not required to close any account by virtue of a match to a named subject on a 314(a) request. The decision to close or keep open an account of a 314(a) subject rests with the financial institution. Should a financial institution choose to close any account pertaining to a 314(a) request, prior to closing the account, the financial institution is encouraged to notify the law enforcement contact on the 314(a) request to determine if closing the account would interfere with an active investigation. Whenever law enforcement requests that an account remains open, the financial institution should request written confirmation of the request from law enforcement.

**16. After conducting the one-time search of its records, does a financial institution have any further responsibilities concerning the named subjects?**

Unless noted otherwise in a 314(a) request, a financial institution is not required by the request to close any account or take any other action with respect to an account or a transaction by virtue of a match with any named subject. A financial institution also should not maintain the attached list of named subjects for the purpose of evaluating whether to open an account or to conduct a transaction, unless the 314(a) request clearly states that the subject list should be treated as a government list for purposes of section 326 of the USA PATRIOT Act, Public Law 107-56. Section 314(a) lists are not official U.S. designations such as the OFAC list, but are names of persons under investigation. Therefore, FinCEN strongly encourages financial institutions not to maintain a 314(a) list for the purposes of determining whether to open an account or conduct a transaction, except where the instructions to a 314(a) request state otherwise.

**17. Will financial institutions be required to review and compare the names of the subjects on 314(a) requests as a part of the new customer identification program requirements of Section 326 of the USA PATRIOT Act?**

Unless noted otherwise in the instructions to a 314(a) request, financial institutions will not be required to review and compare the names of individuals, entities, or organizations named on the 314(a) requests as a part of new customer identification program requirements of section 326 of the USA PATRIOT Act.

**18. What is the difference between the 314(a) process and the OFAC requirements?**

The 314(a) process and the OFAC requirements are separate and distinct. What banks are being asked to do with respect to the 314(a) process is completely separate from their responsibilities and obligations to comply with all OFAC rules and regulations. Banks are not required to close, block or freeze any account or terminate any relationship simply because a name appears on a 314(a) request. If, however, that name also appears on the OFAC List, the bank must comply with all OFAC rules and regulations with respect to that name. If a bank has any questions about its OFAC obligations and responsibilities, it should call the OFAC hotline at 800-540-6322.

**19. Is a financial institution required to file a SAR if it identifies any accounts or transactions involving a 314(a) subject?**

No. The filing of SARs pertaining to the 314(a) process should be in accordance with the SAR rules issued by FinCEN and the primary federal regulators.

**20. What if the matched record falls outside of the requested timeframe, or pertains to an account or transaction in an area of the financial institution that was not required to be searched, or pertains to a record that was not required to be maintained under federal law or regulation?**

The financial institution should treat this as a match, stop its search (of the matched subject only) and notify FinCEN of the match. The reporting of such a match is not prohibited under the Right to Financial Privacy Act (see 12 U.S.C. 3403(c)) or any other law.

**21. Does a financial institution have any special recordkeeping requirements concerning 314(a) requests?**

While there are no specific recordkeeping requirements concerning 314(a) requests, appropriate documentation of the request and record search should be maintained for a reasonable time period to provide for an effective and examination trail.

**22. How does an institution change its contact information?**

The contact information for an institution can be changed by sending an e-mail or facsimile to the institution's primary federal regulator contact listed on the attachment.

For credit unions, 314(a) contact information will be collected on all Call Reports filed on or after March 31, 2003. Credit unions will be required to provide section 314(a) contact information on all Call Reports filed on or after that date. After March 31, 2003, any changes or updates to 314(a) contact information should be made on the next Call Report or, if between cycles, to the appropriate regional office or NCUA examiner.

For OTS regulated institutions, 314(a) contact information should be reported on all Thrift Financial Reports ("TFR") filed on or after March 31, 2003. After March 31, 2003, changes or updates to 314(a) contact information should be made on the next TFR or, if between cycles, by sending an email to [usap.contact@ots.treas.gov](mailto:usap.contact@ots.treas.gov).

**23. Is it permissible for a financial institution to have more than one point of contact person for purposes of receiving the 314(a) requests from FinCEN?**

Yes. A financial institution may have more than one contact person receiving the 314(a) request. Additional contact persons may be added by sending an e-mail or facsimile to an institution's primary federal regulator (see attached contact information).

**24. What should an institution do about searches that were started but interrupted as a result of the November 26, 2002 moratorium that was placed on the 314(a) process?**

Financial institutions do not need to search their records or continue to search their records for subject information for those 314(a) requests that were sent out prior to the moratorium. However, if your financial institution conducted a search and found relevant account or transaction information, the old 314(a) response form (Form B) should be completed and submitted to FinCEN (an institution need not provide identifying information relating to a named subject). If a financial institution did not receive the 314(a) requests sent by FinCEN in November 2002, it does not need to take any action concerning these prior 314(a) requests.

**25. What happened to the Control List?**

The FBI has discontinued the use of the "Control List" and instead will use FinCEN's section 314(a) process to communicate with financial institutions about individuals and entities who are suspected of engaging in money laundering or terrorist financing activities. The Control List required financial institutions to conduct a one time search of their records and financial institutions have no further obligations concerning the Control List. Furthermore, if a financial institution never received the Control List, they do not need to obtain the Control List and conduct searches of their records. In addition, the e-mail address that was established to report Control List matches ([suspicious.accounts@ny.frb.org](mailto:suspicious.accounts@ny.frb.org)) has been closed. Going forward, financial institutions should not consult the Control List or its Supplements in connection with the 314(a) process or when opening new accounts.

**26. Are 314(a) requests confidential?**

Yes. A financial institution generally may not disclose to any other person the fact that FinCEN has requested or obtained information, except to the extent necessary to comply with FinCEN's request. The provision in the implementing regulation, 31 CFR 103.100, allowing financial institutions to use 314(a) information when determining whether to establish an account or conduct a transaction, was intended to apply only when a 314(a) request clearly states that the subject list should be treated as a government list for purposes of section 326 of the USA PATRIOT Act, Public Law 107-56.

**27. Is it permissible for a financial institution to share the 314(a) information with third party service providers and vendors so that they can create software for the financial institution to conduct searches of the 314(a) subjects?**

Yes. For purposes of assisting a financial institution in complying with these requests, a financial institution may provide a list of named subjects to a third-party service provider or vendor so long as the institution takes those steps necessary to ensure that the third party safeguards the information.

**28. Can an affiliated group of financial institutions establish one centralized point of contact for section 314(a), who would then be responsible for disseminating the request throughout the affiliates and compiling the joint response?**

Yes. The rule provides an exception for the disclosure of 314(a) information to “assist the financial institution in complying with any requirement of this part.” 31 CFR 103.100(b)(2)(iv)(3). When sharing a 314(a) request with an affiliate, the central point of contact should ensure that the receiving affiliate is itself a “financial institution” for purposes of the Bank Secrecy Act and its implementing regulations. In order for affiliated financial institutions to avail themselves of the statutory safe harbor from liability in section 314(b) for sharing information with another financial institution (including an affiliate), each affiliated financial institution must submit a notice to FinCEN in accordance with section 314(b) of the USA PATRIOT Act and 31 CFR 103.110.

**29. The Tracking Numbers on the 314(a) requests are not sequential; does that mean that a financial institution may have missed some of the requests?**

No. The tracking numbers on the 314(a) requests are not sequential.

**30. Will the 314(a) requests contain geographic limitations so that only financial institutions operating in a particular region (or foreign country) will need to conduct searches of their records?**

When possible, law enforcement agencies will try to limit the geographic scope of their request. However, it is likely that the majority of the 314(a) requests will be distributed nationwide.

**31. Can a U.S. financial institution send the 314(a) request to its foreign branch offices?**

Unless the 314(a) request specifically requests a review of foreign branches, a domestic financial institution should not search the records of its foreign branch offices and should not send the 314(a) request to its foreign branch offices. If the 314(a) request specifically requests that a financial institution share the information with its foreign offices, it is expected that the foreign offices will maintain the confidentiality of the 314(a) request and will also comply with the laws of the foreign jurisdiction in connection with any actions it may take in relation to the 314(a) request.

**32. Can a foreign branch office in the United States send the 314(a) request to its home office abroad?**

Unless the 314(a) request specifically requests otherwise, a foreign branch office in the U.S. should not send the 314(a) request to its home office abroad. If the 314(a) request specifically requests that foreign branch offices in the U.S. share the information with their home office abroad, it is expected that the home offices will maintain the confidentiality of the 314(a) request and will also comply with the laws of their jurisdiction in connection with any actions they may take in relation to the 314(a) request.

**33. Who should a financial institution contact with additional questions?**

A financial institution should contact FinCEN or its primary federal regulator using the contact information in the attachment.

## ATTACHMENT

### **Board of Governors of the Federal Reserve System**

#### ***Contact information:***

*E-mail:* [patriotact@frb.gov](mailto:patriotact@frb.gov)

*Fax:* (202) 736-5641

*Questions:* Laurie A. Bender, Senior Special Anti-Money Laundering Examiner at (202) 452-3794, or Pamela J. Johnson, Senior Anti-Money Laundering Coordinator at (202) 728-5829

### **Federal Deposit Insurance Corporation**

#### ***Contact information:***

*E-mail:* [fdicadvisory@fdic.gov](mailto:fdicadvisory@fdic.gov)

*Fax:* (202) 898-3671

*Questions:* Special Activities Section at (202) 898-6750

### **Office of the Comptroller of the Currency**

#### ***Contact information:***

*E-mail:* [nationalbankinfo@occ.treas.gov](mailto:nationalbankinfo@occ.treas.gov)

*Fax:* (202) 874-5301

*Questions:* Brian C. McCormally, Director, or Robert S. Pasley, Assistant Director, Enforcement and Compliance Division at (202) 874-4800

### **Office of Thrift Supervision**

#### ***Contact information:***

*E-mail:* [usap.contact@ots.treas.gov](mailto:usap.contact@ots.treas.gov)

*Fax:* (202) 906-6326

*Questions:* John J. Davidson, Senior Project Manager at (202) 906-6012

## **National Credit Union Administration**

### **Contact information:**

*E-mail:* <http://www.ncua.gov/talk2ncua/talk2ncua.html>

*Fax:* (703) 518-6569

*Questions:* John K. Ianno, Senior Trial Attorney at (703) 518-6540

## **Commodity Futures Trading Commission**

### **Contact information:**

*E-mail:* <mailto:AMLstaff@cftc.gov>

*Fax:* (202) 418-5528

*Questions:* Helene D. Schroeder, Special Counsel, Division of Clearing and Oversight at (202) 418-5424

## **National Association of Securities Dealers (NASD)**

### **Contact information:**

*E-mail:* [antimoneylaundering@nasdr.com](mailto:antimoneylaundering@nasdr.com)

*Fax:* (202) 728-8341

*Questions:* Emily Gordy, Kyra Armstrong (202) 728-8221

## **New York Stock Exchange (NYSE)**

### **Contact Information:**

*E-mail:* <mailto:SKasprzak@NYSE.com>

*Fax:* (212) 656-2068

*Questions:* Stephen Kasprzak (212) 656-3000

## **Financial Crimes Enforcement Network (FinCEN)**

### **Contact information:**

*E-mail:* <mailto:sys314a@fincen.treas.gov>

*Fax:* (703) 905-3660

*Questions:* FinCEN Regulatory Helpline at 1-800-949-2732