



Financial Crimes Enforcement Network Department of the Treasury

Mary Beth Guard, Esq.
Executive Editor
BankersOnline.com

Dear Ms. Guard:

On behalf of FinCEN, I am pleased to respond to your communication dated March 24, 2003, in which you provided us with the benefit of a collection of industry comments and suggestions regarding the 314(a) process.

BankersOnline has performed a useful service in affording FinCEN this opportunity to expand upon its on-going dialogue with industry. As you know, FinCEN is a network that encompasses law enforcement, regulatory and financial communities. We predicate our continuing efforts to strengthen the avenues of communication amongst these communities upon three characteristics that we feel distinguish our unique agency: neutrality, networking, and flexibility.

These qualities have served our mission well in these challenging times following the attacks of September 11 and the passage of the USA PATRIOT Act. 314(a), the information sharing provision of Title III of that Act is illustrative of just one of those challenges. The fact that this provision was assigned to FinCEN to design and implement underscores the central role our network plays in facilitating the exchange of information amongst our network partners.

FinCEN, however, recognizes that it is by no means alone in bearing the added responsibilities brought about by the USA PATRIOT Act. The financial community has also been called upon to share in the nation's redoubled effort to thwart terrorism and stem organized money laundering and, it has been exceptionally responsive. The constructive nature of your effort to compile comments from your user community regarding possible improvements to the 314(a) process mirrors the positive spirit with which the financial sector has embraced its PATRIOT Act obligations.

I hope the following responses will be equally useful to your readers and again, may I express our appreciation for your acknowledgement of the effort FinCEN is making to improve the process and for affording us this opportunity to further elaborate on specific areas of concern to financial institutions.

Sincerely,

James F. Sloan
Director

FORMAT ISSUES/314(a)

- A. FinCEN understands the issues concerning the multiple emails and is striving to service the needs of institutions, which use different versions of email systems. FinCEN seeks to employ systems that can accommodate the largest number of users and is looking at ways to improve the effective transmission of 314a requests in the near future.
- B. Several financial institutions contacted FinCEN to address some of the problems with the Tab-Delimited File. We immediately realized there were several discrepancies in our process. In order to respond to the needs of the financial institutions, some of their suggestions will be implemented with the next submission of the Tab-Delimited File as follows:
 - 1. Each data field will be clearly labeled.
 - 2. Each field will be separate, i.e., last name, first name, address, city, state, zip code.
 - 3. Since the information is directly downloaded from our internal database, all information will be consistent.
 - 4. Unfortunately, the information is automatically capitalized in our internal database; therefore, the data will only be provided in capitals for uniformity.
- C. FinCEN is working with the regulatory community to correct these problems. Each name, fax number, and EMAIL address of every point of contact at the financial institutions are vetted through the regulatory agencies. FinCEN prefers to send notices via e-mail, however, if an institution wishes to receive a notice via fax, we will use a fax transmission. Our intent is only to use one or the other and if an institution is receiving notices via both fax and e-mail, it should contact its regulator or advise FinCEN of its preference directly.
- D. We have added the "Tracking Number" to the Tab Delimited File. This allows the ease of matching data from the Tab Delimited File with the Subject Information Forms.

THIRD PARTY VENDORS

FinCEN provides the section 314(a) list directly to financial institutions, not to commercial vendors. It is up to financial institutions to share, as appropriate, the section 314(a) list with their commercial vendors in order to help facilitate the required searches. If a financial institution does share the section 314(a) list with one of its vendors, it should take those steps necessary to ensure that the vendor safeguards the information. See FAQ #27.

TIME PERIODS

FinCEN recognizes that searches going back beyond the general time periods of one year for accounts, and six months for transactions, impose a greater burden upon financial institutions. As explained in its March 21 notice to all financial institutions, FinCEN vets all incoming search requests with senior officials from requesting law enforcement agencies to ensure that the requested information is critical. In the future, FinCEN will make a greater effort to ensure that any search parameters differing from the general instructions are conspicuous to financial institutions.

GEOGRAPHIC LIMITATIONS

FinCEN is working with law enforcement to limit, wherever possible, the scope of searches to certain defined geographic areas. The final decision regarding the scope of any given request, however, depends upon the judgment of law enforcement and its investigative needs.

LAW ENFORCEMENT AGENCIES

A. FinCEN fully agrees that on-going guidance is needed. Moreover, as the two-way nature of this dialogue matures, both industry and law enforcement will gain a better understanding of each other's needs and limitations. In its network role, FinCEN will make every effort to facilitate that learning process, to include exploring ways to make the request process more efficient and, to the greatest extent possible, standardized.

B. FinCEN is in the process of completely redesigning the 314(a) System to ease the burden on the financial institutions. Financial institutions will be informed when this effort is completed.

C. FinCEN is working with law enforcement to ensure that it understands the record keeping rules to which financial institutions generally are subject (such as the five-year retention period for BSA records), and to help ensure that law enforcement understands the impact that each search request (particularly a nationwide one) has on those financial institutions receiving these kinds of requests. Although FinCEN recognizes that a search request that deviates from the general instructions increases the burden on financial institutions, there may be rare instances in which a broader search is warranted. In these cases, FinCEN will strive to ensure that any search parameters differing from the general instructions are conspicuous to financial institutions.

D. Every 314(a) request is certified and again vetted through the appropriate agency to ensure that the information requested from the financial institution is a valid and significant terrorist/money investigation. The financial institutions can be assured FinCEN is not allowing routine-type requests to go out on 314(a). This policy was reiterated in a "Notice to Financial Institutions" which was posted on the FinCEN website on March 21. That Notice stated, "Be assured that FinCEN is carefully vetting all requests from law enforcement through senior levels in the requesting agencies. In turn, law enforcement is verifying that all requests being forwarded to financial institutions represent only the most significant investigations, primarily terrorist related, and that the corresponding need for the requested information is critical."

CLARIFICATION NEEDED

A match occurs when a financial institution determines that it has located an account or a transaction corresponding to one of the subjects described on the section 314(a) list. When conducting the request search, a financial institution should use all of the identifying information provided to help in its determination. If it is unsure whether it has found a match, the financial institution should contact the requesting law enforcement agency for further guidance.

Generally, banks are required to keep and maintain records under the authority contained in Titles 12 and 31 of the United States Code. The regulations implementing the relevant record keeping authority contained in Title 31 are set forth in 31 CFR Part 103. A bank should consult its primary federal regulator to determine the extent to which it is required to keep required under a regulation implementing Title 12.

TRANSMISSION METHOD

We agree with your comments with regard to unencrypted email. As previously stated, FinCEN is in the process of developing a system that will enhance its security measures. Once the system is developed, a notice will be sent out to inform institutions of the new procedures. This system will be more cost effective and will complement the e-filing capability of the PATRIOT ACT Communication System (PACS).