



## Section 314(b) Fact Sheet

FinCEN previously issued a Section 314(b) Fact Sheet in November 2016. This new fact sheet replaces that previous guidance, and also rescinds a previous piece of guidance FIN-2009-G002 (the “2009 Guidance”).<sup>1</sup> A previous published administrative ruling, FIN-2012-R006 (the “2012 Administrative Ruling”), has also been rescinded.<sup>2,3</sup> The discussion related to the scope of the regulatory definition of associations of financial institutions contained in the 2012 Administrative Ruling is reaffirmed and expanded on by this guidance.

### What is Section 314(b)?

Section 314(b) of the USA PATRIOT Act provides financial institutions with the ability to share information with one another, under a safe harbor that offers protections from liability, in order to better identify and report activities that may involve money laundering or terrorist activities. Participation in information sharing pursuant to Section 314(b) is voluntary, and FinCEN strongly encourages financial institutions to participate.

### What are the Benefits of 314(b) Voluntary Information Sharing?

While information sharing pursuant to Section 314(b) is voluntary, it can help financial institutions enhance compliance with their anti-money laundering/counter-terrorist financing (AML/CFT) requirements, most notably with respect to:

- Gathering additional information on customers or transactions potentially related to money laundering or terrorist financing, including previously unknown accounts, activities, and/or associated entities or individuals.

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1. FinCEN Guidance – Guidance on the Scope of Permissible Information Sharing Covered by Section 314(b) Safe Harbor of the USA PATRIOT Act (June 16, 2009), <https://www.fincen.gov/resources/advisories/fincen-guidance-fin-2009-g002>.
  2. FinCEN Guidance - Administrative Ruling Regarding the Participation of Associations of Financial Institutions in the 314(b) Program (July 25, 2012), <https://www.fincen.gov/sites/default/files/shared/FIN-2012-R006.pdf>.
  3. Pursuant to 31 CFR § 1010.716(a)(3), FinCEN may modify or rescind any ruling made pursuant to its administrative ruling authority for good cause. FinCEN has engaged in regular dialogue with financial institutions about the efficacy of the Section 314(b) program and determined there is good cause to provide updated guidance to improve the effectiveness of the Section 314(b) program consistent with the statutory text and legislative intent. This updated guidance is consistent with Section 314(b) and its implementing regulations and FinCEN has determined that it will enhance the program’s contribution to the fight against terrorist financing and money laundering.

- Shedding more light upon overall financial trails, especially if they are complex and appear to be layered amongst numerous financial institutions, entities, and jurisdictions.
- Building a more comprehensive and accurate picture of a customer's activities that may involve money laundering or terrorist financing is suspected, allowing for more precise decision-making in due diligence and transaction monitoring.
- Alerting other participating financial institutions to customers of whose suspicious activities they may not have been previously aware.
- Facilitating the filing of more comprehensive SARs than would otherwise be filed in the absence of 314(b) information sharing.
- Identifying and aiding in the detection of money laundering and terrorist financing methods and schemes.
- Facilitating efficient SAR reporting decisions - for example, when a financial institution obtains a more complete picture of activity through the voluntary information sharing process and determines that no SAR is required for transactions that may have initially appeared suspicious.<sup>4</sup>

### **Who is Eligible to Participate in Section 314(b) Information Sharing?**

Financial institutions subject to an anti-money laundering program requirement under FinCEN regulations, and any association of such financial institutions, are eligible to share information under Section 314(b). This currently includes the following types of financial institutions:

- Banks (31 CFR 1020.540)
- Casinos and Card Clubs (31 CFR 1021.540)
- Money Services Businesses (31 CFR 1022.540)
- Brokers or Dealers in Securities (31 CFR 1023.540)
- Mutual Funds (31 CFR 1024.540)
- Insurance Companies (31 CFR 1025.540)
- Futures Commission Merchants and Introducing Brokers in Commodities (31 CFR 1026.540)

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4. For more information on the benefits of voluntary information sharing under Section 314(b), including examples of ways in which SAR narratives have referenced 314(b), see Issue 23 of the SAR Activity Review – Trends, Tips & Issues at [https://www.fincen.gov/sites/default/files/sar\\_report/sar\\_tti\\_23.pdf](https://www.fincen.gov/sites/default/files/sar_report/sar_tti_23.pdf).

- Dealers in Precious Metals, Precious Stones, or Jewels (31 CFR 1027.540)
- Operators of Credit Card Systems (31 CFR 1028.540)
- Loan or Finance Companies (31 CFR 1029.540)
- Housing Government Sponsored Enterprises (31 CFR 1030.540)
- Associations consisting of the financial institutions listed above<sup>5</sup>

### **What Information can be Shared Pursuant to 314(b)?**

As noted above, this fact sheet revokes the 2009 Guidance, the 2012 Administrative Ruling, and the prior version of this fact sheet issued in November 2016.

Financial institutions or associations of financial institutions may share information with each other regarding individuals, entities, organizations, and countries for purposes of identifying, and, where appropriate, reporting activities that may involve possible terrorist activity or money laundering. Information sharing among financial institutions is critical to identifying, reporting, and preventing crime.

Specifically, financial institutions or an association of financial institutions sharing information under the safe harbor created by Section 314(b) may share information relating to activities that a financial institution or association suspects may involve possible terrorist financing or money laundering. This may occur, for instance, when the financial institution or association is sharing information about specific transactions involving the proceeds of one or more specified unlawful activities (“SUA”), as described in 18 U.S.C. § 1956, which lists the predicate crimes that apply to a money laundering offense. The SUAs listed in 18 U.S.C. § 1956 include an array of fraudulent and other criminal activities, including fraud against individuals, organizations, or governments, computer fraud and abuse, and other crimes.

However, to rely on the Section 314(b) safe harbor, a financial institution or an association of financial institutions need not have specific information indicating that the activity in regards to which it proposes to share information directly relates to proceeds of an SUA or to transactions involving the proceeds of money laundering, nor must a financial institution or association have reached a conclusive determination that the activity is suspicious. Instead, it is sufficient that the financial institution or association has a reasonable basis to believe that the information shared relates to activities that may involve money laundering or terrorist activity, and it is sharing the information for an appropriate purpose under Section 314(b) and its implementing regulations. Therefore a financial institution or association can

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5. FinCEN provides further guidance below on the types of permissible associations of financial institutions

share information in reliance on the Section 314(b) safe harbor relating to activities it suspects may involve money laundering or terrorist activity, even if the financial institution or association cannot identify specific proceeds of an SUA being laundered.

Furthermore, a financial institution or an association of financial institutions may, in reliance on the Section 314(b) safe harbor, share information related to activities that may involve possible terrorist activity or money laundering even if such activities do not constitute a “transaction,” as defined in 31 CFR 1010.100(bbb) or elsewhere. For example, a financial institution or association may share information on *attempts* to engage in transactions that the financial institution or association suspects may involve money laundering or terrorist activity and the financial institution or association is sharing the information for an appropriate purpose under Section 314(b) and its implementing regulations. By the same reasoning, a financial institution or association may share information on attempts to induce others to engage in transactions, such as in a money mule scheme, where the other conditions of Section 314(b) are satisfied.

Section 314(b) and its implementing regulations impose no limitations on the sharing of personally identifiable information under the Section 314(b) safe harbor where otherwise consistent with Section 314(b) and its implementing regulations. Nor do Section 314(b) or its implementing regulations impose restrictions on the type or medium of information that can be shared in reliance on the Section 314(b) safe harbor, such as video surveillance footage or cyber-related data such as IP addresses. Section 314(b) information sharing can likewise be verbal as well as written. Of course, financial institutions and associations of financial institutions must maintain adequate procedures to protect the security and confidentiality of all information shared pursuant to Section 314(b) and only use such information for the purposes laid out in Section 314(b) and its implementing regulations. See 31 CFR 1010.540(b)(4)(i)-(ii).

In cases where a financial institution files a SAR that has benefited from Section 314(b) information sharing, FinCEN encourages financial institutions to note this in the narrative in order for FinCEN to identify and communicate specific examples of the benefits of the Section 314(b) program. Please note, however, that while information may be shared related to possible terrorist financing or money laundering that resulted in, or may result in, the filing of a SAR, Section 314(b) does not authorize a participating financial institution to share a SAR itself or to disclose any information that would reveal the existence of a SAR.<sup>6</sup> However, as discussed below, financial institutions sharing information pursuant to Section 314(b) may work together to file joint SARs.

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6. SAR confidentiality standards are governed by applicable SAR regulations. See, e.g., 31 CFR 1020.320

**Can an entity that is not a financial institution under the BSA and its implementing regulations, such as a compliance services provider, form and operate an association of financial institutions whose members can engage in information sharing covered by the Section 314(b) safe harbor?**

Yes, FinCEN does not require the organization that forms and operates an association of financial institutions whose members engage in information sharing protected by the Section 314(b) safe harbor to itself be a regulated financial institution under the BSA and its implementing regulations.<sup>7</sup> Furthermore, there is no Section 314(b) requirement that an entity forming and operating an association of financial institutions be a subsidiary or corporate affiliate of a financial institution.

Any entity forming an association of financial institutions must, of course, conform its activities with the other requirements of Section 314(b), including the use and security requirements of 31 CFR § 1010.540(b)(4).

**Can an unincorporated association governed by a contract among the group of financial institutions that constitutes its members engage in information sharing covered by the Section 314(b) safe harbor?**

Yes. Section 314(b) permits unincorporated associations to engage in information sharing pursuant to the Section 314(b) safe harbor. Such unincorporated associations can exist based on contracts among their participants. Of course, such unincorporated associations must conform their membership and activities to all of the requirements of Section 314(b). All members of such an unincorporated association must be financial institutions consistent with the definition of that term in 31 CFR § 1010.540(a)(1). Furthermore, an unincorporated association must operate in compliance with other requirements of Section 314(b), including the use and security requirements of 31 CFR § 1010.540(b)(4).

**How do Financial Institutions or Associations of Financial Institutions Participate in 314(b)?**

FinCEN regulations (31 CFR 1010.540) set forth the requirements that must be satisfied in order to benefit from 314(b) safe harbor protection, as outlined below. A financial institution or association of financial institutions will only benefit from the safe harbor protection if it follows the conditions for participation in the program:

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7. Although the 2012 Administrative Ruling is revoked by this guidance, the determination in that ruling that the applicant met the technical requirements to be considered an association of financial institutions is consistent with FinCEN's updated guidance herein. In particular, FinCEN reiterates its confirmation in the 2012 Administrative Ruling that a limited liability company whose membership is comprised entirely of financial institutions, deemed eligible under the regulations implementing section 314(b), would meet the technical requirements to be considered an association of financial institutions under section 314(b) and FinCEN's regulations implementing section 314(b).

### Submit a Registration to FinCEN

Information regarding the 314(b) registration process is available on FinCEN's website (<https://www.fincen.gov/section-314b>). Financial institutions and associations interested in participating in the 314(b) program must first register with FinCEN's Secure Information Sharing System (SISS) if they are not already a registered SISS user. Upon logging in to SISS, users can then navigate to the "314(b)" tab and submit a 314(b) registration. All registrations are processed within two business days of receipt, and participants will receive an acknowledgment via e-mail.

### Sharing Information with Other 314(b) Participants

Prior to sharing information under Section 314(b), financial institutions and associations must take reasonable steps, such as checking the FinCEN 314(b) participant list, to verify that the other financial institution or association is also a 314(b) registrant. To facilitate the identification of 314(b) program participants, SISS provides tools to search the 314(b) participant list for other participants or download the participant list in its entirety. FinCEN updates the list in real-time. Financial institutions and associations may establish policies and procedures that designate more than one person with the authority to participate in the financial institution's 314(b) program.<sup>8</sup>

### Safeguard Shared Information and use only for AML/CFT Purposes

Financial institutions and associations must establish and maintain procedures to safeguard the security and confidentiality of shared information, and must only use shared information for the purpose of:

- Identifying and, where appropriate, reporting on activities that may involve terrorist financing or money laundering;
- Determining whether to establish or maintain an account, or to engage in a transaction; or
- Assisting in compliance with anti-money laundering requirements.

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8. Although a financial institution participating in the 314(b) program must provide, at a minimum, one point of contact to FinCEN as part of its registration, other employees may participate in Section 314(b) information sharing consistent with the financial institution's policies and procedures.



## **May financial institutions that share information pursuant to Section 314(b) file joint SARs?**

FinCEN's SAR regulations allow for the submission of joint SARs by financial institutions.<sup>9</sup> When financial institutions identify suspicious activity through collaboration pursuant to Section 314(b), they may consider whether a joint SAR would be the most efficient way to provide highly useful information to law enforcement.

Financial institutions should keep in mind that Section 314(b) does not relax the prohibition against SAR disclosures, nor does it otherwise address SAR confidentiality. Financial institutions participating in information sharing pursuant to Section 314(b) remain prohibited from disclosing a SAR or any information that would reveal the existence of a SAR notwithstanding Section 314(b).

However, financial institutions participating in Section 314(b) that are considering filing or have filed a joint SAR may freely discuss the prospective or already filed joint SAR amongst themselves.

## **Updating Point of Contact Information and Additional Resources**

Changes, updates or deletions of current 314(b) registration information can be made through SISS. A detailed 314(b) User Guide is also available in SISS. For additional questions related to 314(b) information sharing, FinCEN can be reached via phone at 866-326-8314 or [sys314a@fincen.gov](mailto:sys314a@fincen.gov).

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9. All FinCEN SAR regulations include a rule of construction that accounts for the possibility of financial institutions filing joint SARs. See 31 C.F.R. 1020.320(e)(1)(ii)(A)(2)(i) (banks); 31 C.F.R. 1021.320(e)(1)(ii)(A)(2) (casinos); 31 C.F.R. 1022.320(e)(1)(ii)(A)(2) (MSBs); 1023.320(e)(1)(ii)(A)(2)(i) (broker-dealers); 31 C.F.R. 1024.320(d)(1)(ii)(A)(2) (mutual funds); 31 C.F.R. 1025.320(e)(1)(ii)(A)(2) (insurance companies); 1026.320(e)(1)(ii)(A)(2)(i) (futures commission merchants and introducing brokers in commodities); 31 C.F.R. 1029.320(d)(1)(ii)(A)(2) (loan or finance companies); 31 C.F.R. 1030.320(d)(1)(ii)(A)(2) (housing government sponsored enterprises).