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Financial Crimes Enforcement Network (FinCEN)
Department of the Treasury
P. O. Box 39
Vienna, VA 22183

Re: Special information Sharing Procedures to Deter Money Laundering and Terrorist Activity
RIN 1506-AB04, Section 314(a) of the USA PATRIOT Act

Dear Sir or Madam:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on FinCEN's proposal to expand access to the data-match program under section 314(a) of the USA PATRIOT Act. The goal of the proposed changes is to allow certain foreign law enforcement agencies to use the 314(a) data-match program currently available to domestic federal law enforcement agencies. Second, the proposal would give access to the system to domestic state and local law enforcement agencies. Third, FinCEN proposes to give itself the authority to self-initiate requests for its own analytical programs and for other agencies within Treasury. At the same time FinCEN proposes to expand access to the programs, it also proposes to incorporate in the rule an expansive reading of the underlying activities that constitute money laundering. ABA has serious concerns about the proposal.

According to FinCEN, "information sharing among governmental entities and financial institutions for the purpose of combating terrorist financing and money laundering is of paramount importance." ABA agrees information sharing is vital to effective efforts against money laundering and terrorist financing, but we also believe that to be successful information sharing must go both ways. In the nearly 40 years since the Bank Secrecy Act was enacted, the industry has been diligent in providing information for law enforcement. Without two-way communication, there is not a true partnership and efforts to combat money laundering and terrorist financing are handicapped.[2] While the statute was designed to

[1] The ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members—the majority of which are banks with less than $125 million in assets—represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2 million men and women.

[2] Section 314(a) of the USA PATRIOT Act specifically mandates "regulations to encourage further cooperation among financial institutions, their regulatory authorities, and law enforcement authorities, *with the specific purpose of encouraging regulatory authorities and law enforcement authorities to share with financial institutions*

improve the information flow *to* the private sector, little effort has been expended in that regard. This proposal continues going down the road away from two-way communication.

ABA opposes the proposed expansion of the current 314(a) process for the following reasons:

1) there is no compelling reason or record to support an accelerated adoption of this expansion;

2) broadening the scope of the current process to include an array of fraudulent or other criminal activities is not warranted as a matter of law or policy;

3) enabling foreign jurisdictions to gain special access to U.S. citizen or U.S. account information is not well founded given the viable alternatives already available; and

4) there is no case made for expanding access to state and local law enforcement officers or to non-law enforcement domestic agencies.

The current 314(a) account identification process[3] represents a limited incursion into U.S. accountholder privacy that is balanced by controls to assure that significant federal law enforcement priorities are advanced, due process rights are protected and investigatory benefits are tracked to hold federal law enforcement accountable for the regulatory burdens imposed on banks. In absence of private/public deliberation, a consensus on the value to be derived from extending the program and a detailed recitation of controls as part of the rule-making process, ABA considers this proposal premature and unfounded.

Background

Section 314(a) was conceived as a means for government and financial institutions to share sensitive, high priority, criminal typologies to enable financial institutions to better detect serious money laundering and terrorist financing schemes. The financial industry was instrumental in the creation of section 314(a) and had been a strong proponent for its adoption for a number of years. The hope was that this controlled sharing of government financial intelligence with the private sector would help prioritize and improve the reporting of actionable suspicious activity by the financial institutions in return. However, to date the 314(a) process has been

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information regarding individuals, entities, and organizations engaged in or reasonably suspected based on credible evidence of engaging in terrorist acts or money laundering activities.*"* (emphasis added).

[3] Although we refer to the account identification process throughout the letter, it is important to recognize that the data-matching requires financial institutions to search their records for current accounts, accounts maintained during the preceding 12 months and transactions conducted outside of an account by or on behalf of a named suspect during the preceding six months.

implemented as an account identification or data-match compliance exercise only.

Currently, when a federal law enforcement agency submits a request to have a financial institution search account and transaction records for a match under the 314(a) program, the requesting law enforcement agency must certify that a subject is suspected of terrorist activity or money laundering, including information about the subject and contact information for questions. Where money laundering is involved, the certification must verify the matter is significant and the information is not available through traditional investigation methods. Requests are distributed bi-weekly and financial institutions search records for a match. The only response is confirmation that a match exists. Law enforcement must then take appropriate steps to request additional information from the financial institution following normal procedures, including compliance with the Right to Financial Privacy Act.

The present proposal seeks to expand the 314(a) account identification framework to cover a broader set of financial crimes to include fraud or other criminal activities and a wider group of authorized requesters extending beyond federal law enforcement agencies. In other words, the proposal increases financial institution burden without rectifying the shortfall this process introduced to the original cooperative purpose of 314(a).

ABA Comments

Unwarranted Expedited Timing of the Proposal

FinCEN asserts that the timing of the proposal is motivated by treaty obligations to afford access to 314(a) type account information to foreign jurisdictions within an immediate deadline. This ostensibly accounts for the rapid 30-day comment period and the complete avoidance of the Bank Secrecy Act Advisory Group (BSAAG) process for exploring policy issues and developing government, law enforcement and industry consensus. However, nothing in the rule-making record supports this accelerated regulatory change to grant unprecedented foreign access to U.S. financial institution account information. Furthermore, this rationale provides no support for the abbreviated comment period's application to the other aspects of the proposal such as the broader definition of substantive scope or the expansion of access to other domestic law enforcement and non-law enforcement agencies. What is perhaps even more troubling is that foreign law enforcement agencies already have access to U.S. account information through existing channels. We also understand the expansion is predicated on reciprocity between the United States and foreign jurisdictions but since that reciprocity is not yet in place, the need to move quickly makes even less sense.

ABA opposes this accelerated comment period and exclusion of the BSAAG from this major policy shift. We question the legal foundation for this approach as well as the practical wisdom in disenfranchising the BSAAG. ABA notes that the proposal is replete with unsubstantiated assertions about the impact in terms of number of new requests that the expanded process would precipitate. These estimates represent another rule-making record deficiency and should have been vetted in a BSAAG subcommittee rather than pulled out of the air. In fact, ABA believes that both BSAAG subcommittee study and plenary debate is advisable before proceeding with this proposal.

As further described in our following comments, ABA also is concerned that the proposed expansion lacks sufficient controls to work properly. Congress created the BSAAG to facilitate constructive solutions between private and public sectors. As an advisory group it would be a logical forum to consider these issues. Even more puzzling for the urgency in the proposal is that foreign countries already have access to U.S. financial institution account information by submitting applications through the Mutual Legal Assistance Treaty (MLAT) process. There is nothing given to explain or substantiate the need for speed. When the 314(a) process was initially put into operation, failure to carefully consider all aspects and procedures for the program caused the system to crash and the program had to be halted until operational controls could be adequately addressed. ABA believes very strongly that the proposal repeats the same errors that crashed the system and could easily overwhelm it again.

Accordingly, ABA believes that this rule-making should be suspended to permit proper study and to establish a sufficient record for whatever proposal, if any, which may be made.

Dangerous Broadening of 314(a) Scope

The proposal would redefine what constitutes money laundering for information sharing purposes by incorporating guidance that was issued earlier this year under the companion statutory provision, section 314(b), that allows U.S. financial institutions to share information. However, that guidance was issued under different circumstances and to address a different set of concerns, i.e., that U.S. financial institutions were not taking sufficient advantage of the information sharing program. There is a significant difference between information shared between two financial institutions to determine whether there may be a problem and information provided to foreign, federal, state and local law enforcement agencies that may be used for investigation, indictment and prosecution.

When the 314(a) system was initiated in 2002, such a broad reading of money laundering was one of the reasons FinCEN had to halt the

program. Regulatory consistency is welcome when warranted, but the steps taken for 314(b) were adopted for very different reasons and under a different program. Recent broadening of the 314(b) safe harbor for U.S. intra-industry information sharing was taken only after a consensus developed in BSAAG sponsored discussions—which expressly distinguished the goal of 314(b) sharing from the currently one-sided sharing occurring under the 314(a) data-match program.

There is no compelling comity between 314(a) and 314(b), especially in how 314(a) has been implemented. As previously noted, 314(a) has been translated into an account identification program that skirts individual due process rights as a trade off that provides a focus for the domestic federal subpoena process and reduces unnecessarily intrusive or burdensome federal prosecutorial fishing expeditions. Because it affects rights guaranteed by the Fourth Amendment, this due process short-cut to produce individually identified account information to the government should remain limited in scope to the type of serious money-laundering and terrorist financing activities that prompted the USA PATRIOT Act's adoption. No case was made in Congress to give FinCEN latitude to widen the targets of this extraordinary power. Neither has FinCEN produced a factual record in this proposal to support such a change. Broadening the scope improperly sends a signal that serious money-laundering and terrorist financing crimes have no greater priority than standard financial fraud or other criminal cases.

ABA is not only concerned that this expanded reading of the scope of the 314(a) program could once again easily overwhelm the system. We are also concerned that, because it lacks necessary controls to prioritize and manage zealous U.S. and foreign law enforcement agencies, it threatens to redefine criminal due process protections in the field of financial crime by administrative fiat without a Congressional mandate. Accordingly, we oppose the proposed re-definition.

Expanded Access Exceeds Statutory Purpose and Lacks Controls

The inadequacy of the current 314(a) regulation to manage the account identification process it implemented was demonstrated in the first few disastrous weeks of its introduction and led to an extended moratorium on its use until appropriate controls could be put into place. Unfortunately, these controls have never been codified in the regulation itself.

ABA believes that it is past time for the controls to be incorporated into the rule before any expansion of scope or access is considered. FinCEN as BSA gatekeeper should operate under promulgated regulatory standards that govern not only financial institution compliance, but U.S. and foreign law enforcement access to assure balance in accountability of all parties. Unless, FinCEN operates by controls established in enforceable final

rules, the agency will not be in a sufficiently strong position to resist pressures by domestic or foreign law enforcement requesters to bend the standards and ignore the controls.

As ABA sees it, the key components of current 314(a) process controls are categorized into three groups:

Ensuring Requests are Proper. After the moratorium ended, FinCEN established a certification process predicated on the internal vetting we understand federal law enforcement agencies adopted as a response to the initial problems that overwhelmed the system. These internal vetting mechanisms are designed to ensure requests are appropriate, are focused on terrorist financing or significant money laundering, and are not "fishing expeditions." The goal of these controls is to prioritize differing law enforcement agency requests, limit the number of requests made on financial institutions, and tailor requests so undue burdens are not imposed. The present proposal does not spell out whether such necessary controls will be implemented and enforced going forward. Mere reference to a certification process is inadequate—as we learned the first time. There is nothing to suggest that the additional law enforcement agencies that have access under this proposal will receive similar federal law enforcement vetting to assign necessary priorities and screen out lower level requests.

As the gatekeeper and liaison between the private sector and law enforcement, an appropriate role for FinCEN would be to ensure that agencies that access the 314(a) data match program take the necessary steps and have the proper controls to ensure and verify that requests meet the restrictions of the program. Second, in this role, FinCEN should be in a position to verify that this is being done and that those who use the system are in compliance. The proposed certification process does not provide the verification or controls needed to ensure requests meet the proper limitations. Nor is there anything in the proposal to explain how FinCEN will control the process – or in fact whether there are any real controls. Absent such oversight or regulatory standards, the certification process will be meaningless.

Acting on Responses to Positive Matches. The 314(a) program is a focused program. It verifies the existence of an account or transaction belonging to the subject of the request. It is designed as a first step in a multi-step process for law enforcement to obtain financial institution account information. However, it serves a valuable resource streamlining purpose and thereby expedites the ability of prosecutors and investigators to home in on the accounts of subjects of interest. However, the proposal does not articulate the mechanisms for how information will be shared or what process will be followed when a match is found. This is especially critical for foreign law enforcement agencies. There is nothing that clearly

explains what steps law enforcement agencies must take after a match is identified. The proposal should clearly explain how law enforcement agencies will comply with the Right to Financial Privacy Act and other applicable laws.

Data Tracking. Finally, federal law enforcement agencies are required to track their use of the data to provide feedback, demonstrate program value and maintain accountability. While some contend this information ought to be enhanced to be more meaningful, the current FinCEN reports do track data on additional accounts identified, subpoenas issued, indictments, prosecutions, arrests, convictions and amounts recovered. These data reporting requirements should be made explicit in the implementing regulation. ABA believes FinCEN must establish similar requirements under this proposal, especially with regard to foreign law enforcement agencies. ABA also believes it would be useful for both the public and private sectors to segregate reported data into categories for federal law enforcement, state and local law enforcement and foreign law enforcement to track the success of the program. This information also is necessary to ensure the system is not being misused and to satisfy that part of the statutory mandate for feedback from law enforcement to financial institutions.[4]

ABA notes that FinCEN has recently changed how it reports 314(a) statistics. Once again this change was done without BSAAG input or discussion—and without any advance notice or consultation with the financial industry. It appears that the changes reflect a relaxation of the accountability reporting that law enforcement agencies have previously been obligated by FinCEN to perform and also decreases the transparency of the information provided. This illustrates ABA's point—there must be written rules to hold law enforcement agency requesters accountable for demonstrating the benefits of the 314(a) data match process so that the burdens imposed on banks are justifiable and the results of the process clear and easily understood.

Before proceeding to codify these controls, ABA urges FinCEN to bring them before the BSAAG members to allow the industry, regulators and law enforcement to discuss the issues in order to develop appropriate steps.

[4] ABA also believes that the information collected and published under the program needs to be revised and presented in a more meaningful way. Currently, the information is presented as aggregate data covering nearly 7 years of data collection, possibly to obscure the limited utility the information has had. ABA believes the data is ripe for GAO review and analysis.

Requests from Foreign Jurisdictions

ABA understands that international cooperation is important to achieve AML/CFT success for each country in this inter-connected world that we wish to protect. However, there is nothing in the proposal that validates or explains why existing programs that give foreign jurisdictions access to information through the existing MLAT process need to be changed to provide access to the 314(a) data-match system. Between the Egmont Group and MLAT[5], each participating Financial Intelligence Unit (FIU) can follow established processes to obtain necessary investigatory access to the private information of foreign nationals while respecting applicable privacy and criminal due process constraints. These are the appropriate mechanisms for foreign jurisdictions to follow in obtaining non-public financial information about U.S. financial institution accounts. There is absolutely no indication that the extraordinary power available under the 314(a) data-match program was ever intended by Congress to be put at the service of foreign countries. FinCEN should not abet such an expansion without such a legislative mandate.

FinCEN should not proceed without such a mandate as the situation will only be made worse if FinCEN does not serve as gatekeeper to implement the controls that apply to the current program, as described above. These controls must then be tailored to the particular issues surrounding foreign law enforcement access. BSAAG consultation should be a prerequisite to proceeding to shape controls for this category of requesters. The unsubstantiated assertion that only 60 foreign jurisdiction requests per year will be processed is a prime example of the kind of factual predicate that should be put to the test of BSAAG deliberation and study before proceeding with such a regulatory proposal.

As noted above, FinCEN must be in a position of strength to manage the system if expansion of access is implemented. Foreign requests invoking foreign priorities will be hard to resist in the absence of established rules to be enforced against requesters. Such rules will also provide FinCEN with a standard of oversight in its gatekeeper role by allowing the Inspector General or the GAO to audit FinCEN's performance in meeting the standards set by such written controls. It should be remembered that access to the 314(a) account identification process is not a right, but a privilege—a privilege based on a predicate of public/private sector cooperation. FinCEN as gatekeeper must be prepared to withhold such a privilege from those who do not demonstrate that they meet the high standards for access, use and accountability.

First, with respect to the group of controls ensuring proper requests, federal law enforcement officials along with FinCEN should participate in vetting all requests from foreign countries to assure consistency in the

[5] Mutual Legal Assistance Treaties

priorities that the process is applied to pursue and the law enforcement bona fides of the foreign representatives initiating the request. FinCEN needs to establish a mechanism to ensure requests are properly screened and FinCEN must articulate how this will work. ABA strongly recommends that these procedures centralize the process through one designated U.S. liaison. The proposal outlines vague parameters about working through non-specified foreign attaches and liaisons but ABA believes more thorough detail is needed for the program to be workable.

Second, as an aspect of the second group of 314(a) controls, it will be important for FinCEN to maintain a list of countries that can access the system. This list should be limited to those countries that are signatories to MLAT so that there is a workable judicial process in place for any such country to pursue account identification information returned in response to the country's authorized request. Unless foreign law enforcement officers can follow such established procedures to invoke U.S. judicial process, there is no authorized mechanism to translate a 314(a) match into legitimate record production. End runs by foreign jurisdictions that would use their own judicial process against U.S. banks with operations in those jurisdictions rather than follow treaty procedures cannot be permitted under the 314(a) process.

Third, foreign requesters must be obligated to the data tracking and reporting requirements of the group three controls to assure that the process is providing the expected value for the additional burden U.S. financial institutions are undertaking.

Finally, while U.S. financial institutions must maintain confidentiality on these requests, nothing in the proposal suggests that the same confidentiality applies to foreign law enforcement agencies that receive information. This has been an ongoing concern of FinCEN in discussing Suspicious Activity Report (SAR) sharing by U.S. financial institutions with their affiliates based outside the United States, as more fully discussed below. Clearly, similar verification that information shared under this program is given a guarantee of confidentiality is critical.

Requests from State and Local Law Enforcement

Initially, the 314(a) process was restricted to federal law enforcement with criminal investigative authority. FinCEN wants now to expand that to state and local law enforcement agencies. ABA understands it may be appropriate to grant access to state and local law enforcement if access is being granted to non-domestic agencies, but we believe that more details about how this program will operate are critical for successful implementation. Unfortunately, this change has not been discussed to any extent with industry representatives or advisory groups, and details on how this will operate are completely lacking in the proposal. Once again,

the unsubstantiated assertion that only 50 requests a year will be attributable to this expansion of access has no basis in the record or prior BSAAG study or deliberations.

One glaring omission in the proposal record is how FinCEN will guard against overlapping interests of different foreign, federal, state and local agencies pursuing the same subjects for the same or even different activities. How will the priorities be managed, and how will the pursuit of responsive information be handled so that the enthusiasm of one law officer who reaches the courthouse first does not create a *de facto* priority contrary to that warranted by more important offenses being pursued by others against the same subjects or accounts?

At a minimum, FinCEN must ensure that requests comply with the statute, existing rules and the three groups of controls previously described. Within these controls, FinCEN must define which state and local law enforcement agencies are eligible to submit requests. Different state laws establish different qualifications for what constitutes a law enforcement agency. For example, if a local transit authority is designated with certain law enforcement powers does that mean it can submit a request?

Furthermore, FinCEN must institute procedures to monitor requests from state and local law enforcement to protect the security and confidentiality of data (similar to requirements for financial institutions in many instances). To do this, FinCEN may need to develop training and guidance for state and local law enforcement agencies authorized to access the system. For example, where access to BSA data has been problematic, anecdotal evidence suggests it occurs more frequently at the state and local level. Proper controls are needed to ensure the system is not abused.[6]

FinCEN Self-Initiated Requests

The last part of the proposal would authorize FinCEN to submit requests for itself and other parts of Treasury. FinCEN believes self- initiated requests would help it analyze trends but nowhere in the proposal does FinCEN explain why it needs such access, how it will use this authority or what limits would apply. ABA believes that if FinCEN is going to submit requests to the program for analytical purposes then it should clearly articulate the rationale and how the information will further FinCEN's analytical mission. Separately, since federal law enforcement agencies already have access to the system, it seems entirely inappropriate for FinCEN to make presumptions and combine requests from different law

[6] There have been reports of local sheriffs who access databases to get information on a daughter's boyfriend and other inappropriate uses. Recently, the Department of Justice has prosecuted cases where idle curiosity on the part of federal employees led them to improperly access federal databases. See, e.g., http://www.justice.gov/opa/pr/2009/November/09-crm-1208.html.

enforcement agencies; where coordinated requests are appropriate, law enforcement agencies would be better served if FinCEN notifies the agencies they are pursuing similar interests rather than FinCEN over-riding law enforcement.

Perhaps more troubling is the suggestion that FinCEN will submit requests for other divisions of Treasury. ABA seriously questions whether this is appropriate or even within the statutory authority. The predicate in the statute is granting access to federal agencies with law enforcement authority but nothing explains the connection between this authorization and divisions in Treasury. If FinCEN is to submit requests for other areas of Treasury that do not have law enforcement authorization, the proposal should clearly articulate how and when those requests will be submitted and under what authority this is being done so that the proposal can be more fully and adequately considered. It should also be clearly spelled out which other agencies of Treasury will be involved.

On this state of the record, ABA strongly opposes expansion of access to FinCEN or other non-law enforcement offices of Treasury or any other federal agency.

Regulatory Burden

ABA believes the proposed expansion of the 314(a) process will exponentially increase burdens on financial institutions, FinCEN and the 314(a) system itself if the proposal is adopted. As noted in the preceding section, the proposal does not acknowledge that federal law enforcement agencies recognized the jeopardy an open-ended request mechanism could have for this process when the program initially failed. As a result, federal law enforcement agencies implemented internal review processes to review requests before submission to FinCEN. This ensures any requests are truly related to money laundering or terrorist financing. While FinCEN estimates only 10 additional requests per month in total will result from this new expansion,[7] ABA believes that estimate is extremely and unrealistically low. Indeed, without any way to ensure requests are terrorist financing or significant money laundering cases that cannot be pursued through other avenues, it is likely the system will be misused. These controls are especially important with regard to foreign law enforcement agencies, but also necessary for state and local law enforcement agencies. It is incumbent on FinCEN to demonstrate it can

[7] FinCEN estimates that there would be approximately 120 additional subjects submitted to the data-match program: 60 through foreign law enforcement agencies, 50 through state and local law enforcement agencies, and 10 though FinCEN. Bankers tell us that they have noted a steady increase in the number of subjects on the bi-weekly requests even before the proposal has been adopted. ABA strongly questions whether this estimate is accurate. We have no data to refute the estimated numbers, but would be very surprised if these numbers were not quickly eclipsed and very far below reality. Bankers have indicated that there has been a notable increase in the number of requests under the current system and it can be anticipated that the proposal will further this increase.

ensure the process is not abused. FinCEN should plan to track the increase to verify the estimates laid out in the proposal.

Time Necessary to Comply with a Request

FinCEN estimates that it takes a financial institution an average of four minutes to each subject identified. While the process has become increasingly automated, ABA believes this estimate grossly understates the amount of time needed for each subject listed. For a smaller institution, it is still likely that the research is done manually. While larger institutions are more likely to rely on automation for searches, there is still a manual element to the research. Whether automated or not, financial institutions must access a variety of internal systems to research a subject. For example, a large financial institution may have to check commercial loan systems, consumer loan systems, commercial and consumer real estate systems, trust operation systems, and more to determine if a match exists. Financial institutions of all sizes manually review matches to ensure compliance and accuracy before responding. In addition, if a match is identified, many financial institutions undertake an *ad hoc* analysis to identify and report potentially suspicious activity based on the premise that such analysis is necessary under a risk-based approach to BSA compliance and to satisfy the expectations of supervisory agencies and financial institution auditors. Four minutes on average per subject may be enough time to download the information and distribute it throughout the financial institution to begin the process but does not nearly encompass all that must be done. To reflect more accurately the time needed, ABA strongly suggests the estimate for the research portion should be increased to more than 30 minutes per subject.

Even so, that estimate misses the most burdensome element: responding to law enforcement requests when there has been a data match. The steps and resources required for this latter part of the process are the most time consuming. While an accurate estimate will be difficult, based on the number of responses and the average time for responding to a subpoena or other request, it should be possible to develop an estimate which should be factored into the equation.

Conclusion

The proposed expansion of the 314(a) program is a significant step that merits careful and thoughtful consideration. This is especially critical since failure to do so when the program was begun caused FinCEN to halt the operations until the flaws in the system could be repaired. ABA is very concerned by the lack of prior discussion or careful deliberation and the limited time given to the industry to respond. If the magnitude and potential impact of the proposal are considered, only 30 days to comment is clearly not enough time for meaningful or thoughtful response. This

truncated comment period is especially problematic given the lack of discussion going into the proposal before it was published in the *Federal Register*. Failure to take advantage of industry forums or other opportunities to discuss the proposal with the financial sector while the proposal was being formulated is difficult to understand, especially since FinCEN has not clearly explained the urgency.

Overall, we believe this proposal continues to erode the fundamental underlying reasons section 314(a) was originally enacted in 2001. At that time, the general perception was that financial institutions were feeding information into the proverbial "black hole" and that communications with law enforcement was an inadequate one-way street. The goal of the section 314(a) was to encourage two-way communication between law enforcement and the financial sector to promote a true partnership. Over the years, especially with the 314(a) process, this goal of two-way communication has eroded. It seems as though 314(a)(2)(C) is the only part of the statute that is operational and the other provisions have become, in practice, irrelevant. ABA fears that this proposal, which heavily stresses the flow of information from the financial sector to law enforcement, is an unfortunate step that continues this digression. More and improved communication from law enforcement to the financial industry to help financial institutions identify and properly focus resources that detect and deter money laundering needs increased attention and will improve overall BSA success.

Thank you for the opportunity to comment. We welcome the opportunity to work with FinCEN and with other interested parties to address the problems we have identified in order to improve the process. If you have any questions or need additional information, please contact me by e-mail at rrowe@aba.com or by telephone at 202-663-5029.

Sincerely,

Robert G. Rowe, III
Vice President & Senior Counsel