

***USA PATRIOT Act, Section 314(a) and 314(b)***  
***Information Sharing:***  
***Beneficial and Detrimental Effects of the Act***

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## Summary

The main intent of this paper is to analyze the impact of the USA PATRIOT Act, Section 314(a) and 314(b). It analyzes both beneficial and detrimental effects of the two sections of the Act. The effects make it significant for both financial institutions to consider their stances in the sections, which are primarily dedicated to the sharing of information. The paper analyzes the regulations stipulated by FinCEN (Financial Crimes Enforcement Network) in the process of sharing of information and the criteria used to determine the qualifications of a financial institution in the information-sharing pact. From the reading, it is clear that the security is the main issue or concern in the sharing of information. The paper also provides the loopholes that may be found within the system of sharing information. Finally, it offers suggestions and/or recommendations on methods that can be used by FinCEN in order to have a more secure system. Addressing the security and privacy issues would be beneficial to individuals and institutions but still maintain its benefits within investigations.

The enactment of the USA PATRIOT Act, Section 314(a) and 314(b) was a reaction of the US Congress and the President following the tragic event at the World Trade Center that hit the country on September 11, 2001. The two sections have a similar objective of detection and prevention of terrorism and money laundering in aid of funding terrorism. The goal is achieved through enhanced investigative tools and information sharing about any suspicious transactions and accounts. The full act even encompassed immigration laws, better surveillance process, and stringent measures to curb money laundering.

The two sections have helped to forge a strong and effective relationship not only between financial institutions and law enforcement agencies but also between the former themselves. In order to improve the effectiveness of information sharing, the section was divided into 314(a) and 314(b). Section 314(a) involves the allotment of information sharing between institutions of finance and the federal agencies tasked with enforcing law. On the other hand, the latter deals with the sharing of information amongst financial entities only. While there are no restrictions on the application of the shared information under Section 314(a), there is a limitation regarding the purposes of the information in Section 314(b). The nature of regulations and requirements of the two sections also varies as FinCEN stipulates differing standards and rules that must be adhered to by the financial institutions.

## Introduction to USA PATRIOT Act, Section 314(a) and 314(b) – Information Sharing

The USA PATRIOT Act was enacted and introduced on 26<sup>th</sup> October 2001 after being endorsed by Congress and was later appended into USA law by President George Bush. With its ten-letter abbreviation (USA PATRIOT) expanded, the full title is “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001”. The main purpose of the Act was to curb terrorism and punish individuals who engaged in related activities both in the U.S. and around the world.

The Act was aimed at enforcing the law and enhancing security around the world through the provision of necessary investigatory tools.

The PATRIOT Act is important in various fields due to the added level of security that it offers. For example, the surveillance and investigatory tools are helpful in the detection and prevention of terrorist acts while the same can be used to carry out the prosecution of various crimes, such as, the bankrolling of terrorism through money laundering. Additionally, the Act is used to ensure that financial institutions adhere to or comply with regulations. The scrutiny offered by the Act reduces the level of criminal abuse that may be perpetrated by the institutions. The provisions of the Act also strengthen the capacity of prevention of the exploitation of the U.S. system of finance for individual gain by officials who may be corrupt. Therefore, the Act can be used on the repatriation of assets that have been illegally acquired back to the countries where they belong.

The USA PATRIOT is divided into various sections, some of which directly or indirectly affect financial institutions. Some of the sections that may affect the institutions are 311, 312, 313, 314, 319(b), 325, 326, 351, 352, 356, 359, and 362. Sections 314(a) and 314(b) are dedicated to deter or prevent money laundering. The provisions of the two sections imply both individuals and financial institutions. Therefore, both parties should be aware and care about implications of the provisions in the sections, whether positive or negative. The Bank Secrecy Act (BSA) under statutory laws includes various institutions as financial. Some of the institutions considered as financial entities in the Act include insured banks, private bankers, credit unions, and commercial banks. Other financial institutions are thrift institutions, brokers who are registered with the commission responsible for securities and exchange, and a broker who deals with commodities and securities. The Bank Secrecy Act (BSA) also recognizes redeemers, pawnbrokers, travel agencies, gambling casinos, US postal services, and jewelry dealers as financial institutions.

Licensed money senders have also benefited from the Act since they are recognized. The legal transmission of funds, engagement in informal transfer of money through modern systems and facilitation of money transfer by a network of people are also covered in the provisions of the Act. The effectiveness of the Act is evidenced or underlined by the application of the provisions at both the domestic and international level. The provisions of the Act have been utilized in the financial control of the US Postal Services and automobiles companies. The real estate industry, which is a rapidly growing sector in the US economy, is also provided for in the Act. This is the impetus which would increase the number of investments in the sector. The resulting impact would be an increase in the level of income and a subsequent rise in the standards of living. The US government will also register increases in revenue generation since there will be diversification of sources of income and taxes from the sector. However, the USA PATRIOT Act has some regulations which control the type of institutions or bodies that can engage in the sharing of information. For example, all agencies that engage in the activities related to the Secretary of the Treasury's determination as a business or substitute business are allowed to be involved in sharing of information.

The aim of this paper is to explore and investigate the USA PATRIOT Act based on Section 314 with focus of its two sub-sections: 314(a) and 314(b). The investigation majorly considers the significance of the two sub-sections based on why individuals and financial institutions should consider both their positive and negative impacts. The paper also focuses majorly on security and the improvement of criminal investigations such as money laundering and terrorist acts as the benefits or advantages of Section 314. On the other hand, it emphasizes on the compromise of the security and personal privacy as the negative impact of the Act. Additionally, the paper looks into various aspects of the sub-sections such as the criterion of sharing information and standards or requirements for the process. It also defines key terms and procedures that come into play during the process of sharing of information and the key participants who qualify for the process.

### Beneficial and Detrimental Effects of The USA PATRIOT Act, Section 314(a) - Information Sharing Between Law Enforcement and Financial Institutions

Section 314(a) of the USA PATRIOT Act is a sub-section of 314, whose objective is to detect, disrupt, and prevent suspicious terrorist activities. The Act is also dedicated to encouraging cooperation amongst law enforcing bodies, regulators, and financial organizations. The Financial Crimes Enforcement Network (FinCEN) of the US Department of the Treasury encompasses the provision of Section 314(a) of the USA PATRIOT Act. FinCEN is a special service that is used in law enforcement through the location of financial assets and transactions that have been recently carried out by the person of interest in criminal investigations.

The USA PATRIOT Act Section 314(a) achieves its objectives through encouraging the sharing of information between the aforementioned financial institutions and agencies that enforce the law. The Secretary of the Treasury does the formulation and adoption of a regulation that governs or controls the sharing of information between the two parties. The shared information covers people, entities or organizations doubted to have cosseted terrorist acts and money laundering. The law enforcement agencies can then use the information to gather further evidence, which is useful in prosecution. Being an investigatory tool, the entire Act, from Section 314 and in extension, 314(a), has enabled the US and the world to achieve its main objective of not only deterring crime but also other goals. The scope of the Act is wide and includes many participants thus enabling it to cover other goals and objectives.

Apart from deterring or curbing crimes such as terrorism and the laundering of money, the Act has been dedicated to other functions, which it has effectively assisted in covering, at least partly. One of the areas the Act has highly influenced is the country's ability to not only detect but also to ascertain and prosecute suspects who are involved in related crimes at the international stage. The role has strengthened the capacity of the country to implement proven and effective measures of fighting crime within the borders and the foreign countries. The Act has provided local and international investigation bodies such as the FBI and the CIA with extra abilities and the jurisdiction of monitoring

and inspecting suspect financial bodies that may be funding terrorist acts that have increasingly risen in the recent past across the world through sponsored militia.

Prosecution of crimes related to terrorism and money laundering has significantly increased in effectiveness and efficiency. The trend is attributed to the provision in the Act whose stipulation gives more power to the crime investigating bodies on the level at which they can scrutinize financial accounts in all institutions participating in sharing of information. The final implication is that there is an increased likelihood of identifying suspect accounts as well as the accounts that are at risk of criminal abuse. Identification of the weak points and loopholes in the system of the financial institution is important because it elevates the level of proactivity. After identifying the susceptibility, the financial institutions can be advised accordingly on how to best make their system more secure from possible hacking by terrorists and other criminals. Additionally, the financial institutions whether affected before or not are equipped with modern security equipment beforehand in order to avert any future security breaches in their systems by potential criminals.

The USA PATRIOT Act bestows power to investigation bodies over inspection of accounts operated by all financial institutions that are legally qualified to engage in the process of sharing of information. The Act through Section 314(a) provides appropriate and useful elements, which boost the available investigatory tools that are currently in use. Part of the reason why the provided elements are highly efficient are the standards and regulations that are provided by FinCEN and must be adhered to by all participating financial institutions. For example, FinCEN requires all institutions to report any suspect accounts, transactions and money laundering activities that may have occurred. Additionally, the institutions can be occasionally requested to submit the account details of certain organizations or individuals in order to aid in investigation of crimes. The US has also boosted its strength in controlling the financial system. The Act has enabled the US government to implement measures that are useful in preventing or averting corruption by officials who may have motives of using the recovery of stolen assets. The assets, which are recovered, may have been illegally acquired from individuals or countries. After recovery, the assets are taken back to the legal owners. The provision is beneficial since it improves transparency and reduces corruption in governments and organizations.

A rule established, finalized, and issued by FinCEN in the Act amended the original 314(a) to expand the requirement of particular financial institutions to go through their records. The amendment that incorporated the searching of the records was aimed at ensuring that the financial institutions have responsive or important information related to a particular case under investigation. The requirement has a positive implication for both individuals and the financial institutions. For individuals, submission and sharing of the records improve the security and safety. Available evidence of money laundering to aid terrorist acts increases the capacity of preventing them before they happen.

The financial institutions also benefit from sharing their records with the law enforcement agencies. It ensures that they only transact with legal individuals and

organizations with no criminal or terrorist records. This is important because the law also implicates financial institutions, which have links with such individuals and entities. Therefore, sharing the required information with law enforcement bodies ensures that the financial institutions operate under the laid down standards and regulations.

The regulations by FinCEN in Section 314(a) enables not only the local, federal and state law enforcement agencies to access the shared information but also the foreign agencies. It is estimated that law enforcement agencies have more than 37,000 points that they can gain contact through FinCEN. The sharing platform has enabled the access of records of over 16,000 financial institutions. The process of sharing is achieved when FinCEN receives and processes requests from law enforcement bodies. After reviewing the requests, FinCEN notifies the financial institution with the contacts of interest. The financial bodies are given new information once a fortnight through the available website.

The availing of information by FinCEN to the law enforcement agencies through the website is important in dealing with terrorism and money laundering activities. However, the process may have its downside or disadvantages on both individuals who have active subscriptions as well as the financial institutions. This is because sharing of information compromises the privacy of both the financial institutions as well as their clients. The information is shared through a website, which is susceptible or at risk of hacking by the same terrorists who are being pursued. Furthermore, the law enforcement agencies only work with speculations or suspicions, which does not necessarily prove or show the evidence of guilt. Therefore, the financial institutions may end up exposing the private information of innocent individuals who have no connection to money laundering and terrorism whatsoever.

Client of financial institutions that is regularly monitored by the law enforcement agencies may fear the exposure of their private financial information. Additionally, the increased risk of hacking may, in turn, make them targets of terrorists. The process is exposing since the agencies are served with a lot of information ranging from the subject names, business names, and location. Revealing such important information is very damaging and can amount to infringing excessively in personal information especially if the subject turns out to be innocent.

There is a need for FinCEN to ensure that the damaging effect of exposure especially to innocent individuals and legitimate entities do not negatively affect them. FinCEN has constantly maintained the website where sharing the information is done is highly secure. However, the concerns should be addressed fully so that both individual clients and the financial institutions submit their records but still maintain the privacy of those without terrorism ties. Such measures would improve the confidence in the process as well as avoid the loss of clients by the financial institutions due to fear of exposure through sharing of information. One of the ways that FinCEN has currently employed to address the issue is the sharing information when it is necessary. After receiving the notifications, the financial institutions query or search their records in order to establish any leading matches. The search or query is done on the preceding 12 months as well as on the transactions conducted in the last 6 months. After the query, the financial

institutions are given two weeks to respond with any positive matches that have been unearthed, which may be useful in the investigation. However, if no useful matches are uncovered in the transactions in the accounts of interest, FinCEN instructs the financial institutions not to respond to the request made by 314(a).

FinCEN has established a free flowing method of sharing data between the law enforcement agencies and the financial organizations. It is achieved through an advanced system of communication, which enables an investigating party to have an in depth search of the records in order to gather useful forensic data that may have otherwise not have been unearthed. The partnership is cooperative and is used as a channel of passing, identifying, centralizing, and evaluating of information.

There are important exceptions and rules in Section 314(a) that must be observed. The Act is considered only as a channel that helps in establishing leads during investigations. Therefore, the privileges and provisions that are provided in Section 314(a) cannot be used as a substitute or in place of any legal process including subpoena. The restriction means that the financial institutions have some powers over the positive matches that have been obtained from the search. It is required that the interested law enforcement agency should provide and meet legal standards and comply with them. The agency must prove that it has the right or appropriate investigative tools that it will use to not only obtain the required information but also act on them to further their investigation.

FinCEN has also made efforts to ensure that the requests made through Section 314(a) are utilized appropriately. The first step requires the law enforcement agencies to express assurance that the requests being submitted have been thoroughly scrutinized at the agency level. It is also a requirement that the issue being investigated meets or satisfies the standards laid out by FinCEN on how to formally process Section 314(a) requests. Finally, all the requesters are required to submit a certifying form, which shows that the investigation being carried out is based on credible and reliable evidence. These efforts put in place by FinCEN do not only act as constraints but also as extra security and privacy measures. They ensure that the partnerships between law enforcement agencies and financial institutions are not misused, unless and only when it is inevitably needed. For example, the intervention of the Section 314(a) request is very significant in cases where national security is under threat thus making it a priority to avert the impending danger posed by terrorism. Therefore, it means that the request is a high-profile channel of dealing with insecurities resulting from terrorism hence it is considered as a source of safety for individual citizens and even the financial institutions. Maximum cooperation is important when a request is made in cases where defining investigations about terrorism and related acts are underway.

Criteria for determining the method of lodging requests related to money laundering is available. The criteria are important because the money laundering involves various underlying crimes. One of the criterion used in this case is determining the significance of the presented case of money laundering. The criterion must be fulfilled before a request is submitted to FinCEN through 314(a). An evidence of the fulfillment of the criterion is done through the presentation of documentation to FinCEN. The

documentation shows the size and the impact that the case is likely to have. Determining these features of the case is important because it assists FinCEN in ascertaining the seriousness of the case and the criminal activities that may be underlying therein.

FinCEN's use of the submitted documentation stresses the importance of the case not only to national security but also to the involved law enforcement agency. There are also additional facts contained in the documentation, which further demonstrate the importance or significance of the case. This step is important in investigation since it enables the financial institutions to prioritize certain cases ahead of others because some of them may be more urgent or pressing than others. Therefore, it is an important method in averting urgent criminal activities before other emergencies are addressed. It means that FinCEN in collaboration with the law enforcement agencies can effectively address the needs of not only US citizens but also foreign ones. The law enforcement agencies must always certify and prove that all the available traditional methods of investigating money laundering have been exploited. When those methods have been exploited and exhausted without success, then the use of 314(a) request is merited to further the investigation of the money laundering criminal activities. A proof of exhaustion of the traditional methods is supposed to be submitted to FinCEN. Upon the receipt of the submitted from, a review is carried out before FinCEN provides the request to the relevant financial Institutions.

FinCEN has revised a measure to solve the problem of security and safety of individual and institution information. The strategies were aimed at providing a solution to the rising concern about the leakage of information and the lack of a security-proof system. There were also concerns about the mishandling of information by some of the bodies concerned with the investigation of crimes related to terrorism and money laundering. The strategies have so far helped in safeguarding information from mishandling other than their intended purpose. Maintaining the confidentiality of gathered information and leads is the main objective, which FinCEN aims to achieve through its laid-out methods of security. The protection of confidential information is important in improving the confidence and trust of the institutions, which provide them. Therefore, it is required of the investigatory bodies to ensure that the information obtained from the financial institutions does not get shared with a third party. The information requesters are hence required to have efficient systems that would ensure that the acquisition of information is secured and protected. In cases where a third party must be involved, the financial institutions must ensure that they have the capacity within their systems to have appropriate and efficient security features. A third party may be required to offer technology services through vending. An example of the service that may be required from a third party is the facilitation of searches and financial records. The financial institutions are responsible for any breach in the agreement, which may lead to any leakage of information by the third party.

Generally, the impact of the USA PATRIOT Act through Section 314(a) has proven to be very useful beyond the few downsides it may possess. The scrutiny and its role in investigation is evidently important in dealing with money laundering especially those related with terrorism not only in the US but the world at large. When the few concerns

about security as a personal privacy due to sharing and exposure of information are addressed, then the section of the Act can be a perfect tool for investigation. The statistics around the cases of Section 314(a) has shown tremendous progress and a lot of assistance derived from the requests. By January 2018, it is estimated that the program office dedicated to 314(a) requests has processed and handled over 3,482 requests related to various criminal investigations; 571 cases being related to financing and terrorists and 2,911 others related to money laundering.

Law enforcement agencies have appreciated the benefits derived from the services offered by FinCEN through Section 314(a). The results have been positive since the shared information has enabled the establishment of productive leads that have helped in the investigation of terrorist acts and money laundering cases. Some of suspicious cases have proven to lead to identification of the targeted accounts as well as transactions where the funds have been wired for terrorism. FinCEN has received feedback from the agencies which indicate figures that have benefited from their services. Ten new accounts have been identified, fifty-seven new transactions have also been identified through the program while another ten follow up processes have been taken up by the agencies. These account for 95% successful arrests and indictments that have been made from the 314(a) requests.

### [Beneficial and Detrimental Effects of The USA PATRIOT Act, Section 314\(b\) Voluntary Information Sharing](#)

Section 314(b) of the USA PATRIOT Act is a sub-section of 314, which is aimed at encouraging the sharing of information between financial entities voluntarily. Unlike Section 314(a), which involved common access and cooperation between the financial establishments and agencies that enforce law, this sub-section involves sharing of information between similar entities, that is, financial institutions. The sharing of information in Section 314(a) is mandatory as stipulated in the federal laws. In contrast, Section 314(b) is not mandatory or compulsory but rather purely voluntary.

Despite being voluntary, the sharing information under Section 314(b) is highly encouraged and recommended by FinCEN. The major aim of sharing information between the financial bodies as covered in Section 314(b) is to increase the capacity of identification of any suspected money laundering activities so that they can be reported for further Investigation. The Congress provided the section to provide extra safety and eliminate the risks associated with any civil liability that might be on the customers. The provision is beneficial to the customers or clients of the financial institutions because the liability is eliminated from any form of violation of privacy as well as sharing of false information.

Section 314(b) is also beneficial to the financial organizations who wish to share information with others freely. Apart from increasing the capacity of dealing with money

laundering, terrorism, and related activities, it also promotes mutual understanding and trust among the entities. The institutions will have a united and strengthened level of scrutiny of suspicious money wiring, transactions, and accounts. It is also beneficial to share the information with other institutions since it may help uncover some suspect money transaction by another institution that may have failed to identify it due to poor evaluation and assessment tools. Furthermore, the sharing of information improves the confidence level of clients who feel that the financial institutions that they have subscribed with are fully behind the fight against money laundering and terrorist acts. This may lead to an increase in the number of new subscribers as well as an increase in loyalty and trust of the existing ones.

The Secretary of the Treasury through Section 314(b) offers an opportunity to financial entities and associated bodies to share the information of individuals, organizations, countries, and entities in order to promote the achievement of the section's main goal. The sharing is achieved through the transmission, reception, and exchange of information between two or more financial institutions. The manner in which information is shared through the provision in this section is different from the method used in 314(a) since it eliminated the one-way exchange, which the latter has been criticized for but rather employs real sharing.

The only downside of the sharing of information under Section 314(b) by financial institutions is the fact the amount of information that can be shared is limited. The shared information is only restricted to those that relate to money laundering and terrorists' activities. Therefore, it means that the privacy of the clients is safeguarded to some level while financial institutions can only be able to release and at the same time access a given amount and type of information. The disadvantage of this restriction is that it prohibits the sharing and exchange of information to help in the investigation of other criminal activities. Therefore, the information shared cannot be used in activities, such as, money lending decisions, and locations of loan defaulters and their assets.

Another notable difference between Section 314(a) and 314(b) is the type of financial institutions that the section applies. The former section applies to all financial bodies found in the USA Bank Secrecy Act. In this case of 314(b), not all the financial institutions listed in the Act share information but rather those obligated under the Act to create and maintain a program dedicated to anti-money laundering. Banks that are regulated by federal laws, SEC and credit unions controlled by the National Credit Union Administration also fall in the category. Other institutions that Section 314(b) applies to are mutual funds, dealers in jewels and precious metals, those who operate credit card systems and business that deal with money services. After agreements have been made between financial institutions that wish to share information, the process to exchange can begin with strict adherence to the laid-out procedure.

There are regulatory requirements, which must be met for financial institutions to be part of the information-sharing scheme. Therefore, any financial institution that wishes to access and share information must strive to fulfill the requirements. The procedures and requirements that have been put in place are meant to maximize the benefits of the

sections as well as avoid the misuse of the provisions through improper methods of sharing. Ensuring adherence to the regulations is also important because the objective of having a safe harbor, which is the protection of the sharing parties is easily achieved. When information is improperly shared, and enough protection is not assured, there is a risk of the insecurity of information about customers or clients of the financial institutions.

Another important observation in the regulatory requirement is about privacy and the safeguarding of information by the financial institutions. It is not only a concern to the financial institutions who are the service providers but also the clients. The financial institutions must strive to meet the required standards, which preserve the privacy of clients while the latter must access the capability of the former before seeking its services. The procedures of Section 314(b) solve the problem thus ensuring that clients', such as individuals and organizations, rights to privacy and protection of information are not violated. It is important for the financial institutions to offer the protection in order to avoid possible civil lawsuits due to the violations of privacy by dissemination of personal information. The civil lawsuits may be costly for the financial institutions or even ruin their reputation and in turn, scare away both current and prospective clients. FinCEN must also be provided with a formal one-page document, which acts as a notice that a particular institution wishes to be part of the information-sharing team. Additionally, they must prove or certify FinCEN that they are financial institutions that are ready and willing to uphold the concealment of the information that will be pooled. The final requirement expects the financial institution to have a point of contact where all inquiries about information sharing are addressed.

Participation of financial institutions in the sharing of information as stipulated in Section 314(b) is much easier than in Section 314(a). The voluntary nature of the sharing as in 314(b) and the factors, which qualifies participation or eligibility makes it less complicated as compared to 314(a). The program of fighting money laundering, which is achieved through Section 314(a) is fully implemented and can be in operation the moment the eligibility required by FinCEN is met. The section allows the sharing of information between many types of financial institutions, which include but are not limited to banks, card clubs, securities dealers, mutual funds, and insurance companies or any association made up of a group of any of the aforementioned institutions.

FinCEN has a guideline, which is issued to all participating financial institutions the sought to offer clarification about the safe harbor provision. The provision requires the financial institutions to carry out any information sharing activity about all proceeds that are suspected to related to money laundering and other related criminal or unlawful acts. The safe harbor in Section 314(b) is used as an assurance channel, which all shared information useful in detecting criminal activities are safeguarded and protected from access by unauthorized persons. Additionally, FinCEN keep records about all the transactions that have been beneficial during information sharing. It aims at having a narrative with examples of how specific financial institutions have contributed to the course through information sharing. Therefore, the financial institutions keep all the information records regarding any suspect criminal activities. FinCEN also maintains a

record of Suspicious Activity Report (SAR) records filed by financial institution, which is important and needed for future references.

There are regulations provided by FinCEN concerning the safety and security of information sharing between financial institutions under the Act. Section 314(b) of the Act prohibits the disclosure of the SAR's existence or the unauthorized sharing of information with non-participating institutions. FinCEN has other regulations that control the participation of institutions. The regulations outline the standards and requirements that must be fulfilled for an organization to be allowed to share and benefit from the advantages of safe harbor. An institution may as well engage in the sharing of information without meeting the requirements since it is voluntary. Such an institution will not be subjected to any kind of penalty from FinCEN. However, it will not be able to enjoy the added benefit of safe harbor defense or protection like other institutions that have adhered to the required standards. Any financial institution that wishes to be part of the information sharing program must first register through submission of the 314(b) form to the FinCEN website. The application is received and processed within two days after submission. Qualified institutions are then notified via email. Application is usually open to all institutions that have never registered in the Secure Information Sharing System (SISS) provided by FinCEN.

Section 314(b) has other regulations that financial institutions must meet before they start the sharing of information. For example, information can only be shared with other institutions that have also been filed and submitted the written notice to FinCEN for clearance. In order to confirm the eligibility of other institutions, it is advisable to confirm from the list that is periodically updated by FinCEN. Concerning the confidentiality of the information, every financial institution that participate in sharing of information is obligated by Section 314(b) to maintain the highest level of the security. Establishment of procedures both internally and externally is used to ensure the confidentiality. Additionally, a limitation is put on the level at, which the shared information can be used. There are only three ways or purposes that an institution can use information it has acquired from another. The three purposes are identification of reporting of terrorism and money laundering activities, determination of option between to establishing an account or carry out a transaction, and assistance in conforming to Bank Secrecy Act (BSA) standards.

Apart from the regulations, there are important requirements as well as restrictions that financial institutions must observe before and during the sharing of information. The annual certification is the one of the requirements under 314(b) sharing by FinCEN. The annual certification requires the financial institution to reiterate their commitment in continuing to engage in sharing of information while still maintain confidentiality and the required level of security as used in their own SAR records. The requirement is usually completed and submitted to FinCEN website electronically or physically through the postal address. Verification requirements must also be met where financial institutions check and confirm that other participant have met the annual requirement before the commencement of information sharing.

## Conclusion

The enactment of Section 314 was purposely meant to encourage the sharing of information. It was necessary to have effective strategies on how to combat terrorism against the USA and the world at large thus the introduction of the Act and other responses. From the available statistics, it can be deduced that it has hugely affected both individuals and the financial institutions. The institutions have more access to information, which improves the capacity to avert terrorist acts and money laundering. However, it is also evident that the transactions and accounts of subscribers will be exposed to a lot of scrutiny. It is for the reason of privacy issued that FinCEN has introduced standards that regulate the use of the shared information in order to safeguard and protect the information.

The importance of the sections, especially 314(a), has been a revelation especially to the law enforcement at the federal level. It has enabled the agencies to establish leads to criminal activities related to terrorism. The Act has partly achieved its objective, which it hugely emphasized on about protecting and safeguarding the civil rights and liberties of the citizens. FinCEN has also reported that the feedback it has been received from the agencies has been hugely positive. However, there is need to evaluate or assess the effect it has on the financial institutions. FinCEN should ensure that the requests and searches done on the financial institutions are timely and do not inconvenience their operations. It would also address the reluctance that some of the institutions show in sharing of their information. The sharing of information directly affects the institutions in terms of the trust that the subscribers have on the security and privacy of their information. It is also costly to implement and adhere to the standards provided by FinCEN. Therefore, FinCEN must address the issues that may deter the cooperation of the financial institutions by providing security and support. The changes as well as the reform of counterterrorism used in other regions, such as, community-based approaches and policing will fully equip the federal agencies to curb terrorism in the country and across the borders. Generally, it can be concluded that the investigative tool provided by the Act has been valuable.

*“The better the information flow and sharing, the more likely the prospects for law enforcement success stories. The more likely financial investigative success, the less likely we can be hurt by terrorist and criminal organizations.”*

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