

transmittal order. This document further explains that FinCEN is revoking prior guidance regarding the meaning of the term "address", eliminating the need to utilize the conditional exception for transmittal orders lacking a transmitter's street address.

**DATES:** Effective December 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** Don Carbaugh, Office of Regulatory Programs, FinCEN, (202) 354-6400; and Al Zarate, Office of Chief Counsel, FinCEN, at (703) 905-3590 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 1998, FinCEN granted a conditional exception (the Customer Information File (CIF) Exception) to the strict operation of 31 CFR 103.33(g) (the Travel Rule). See FinCEN Issuance 98-1, 63 FR 3640 (January 26, 1998). The Travel Rule requires a financial institution to include certain information in transmittal orders relating to transmittals of funds of \$3,000 or more. The CIF Exception addressed computer programming problems in the banking and securities industries by relaxing the Travel Rule's requirement that a customer's true name and address be included in a funds transmittal order, so long as alternate steps, described in FinCEN Issuance 98-1 and designed to prevent avoidance of the Travel Rule, were satisfied. By its terms, the CIF Exception to the Travel Rule was to expire on May 31, 1999; however, in light of programming burdens associated with year 2000 compliance issues, FinCEN extended the CIF Exception so that it would expire on May 31, 2001. See FinCEN Issuance 99-1, 64 FR 41041 (July 29, 1999). On May 30, 2001, after first soliciting input from the law enforcement community for its views on any law enforcement burdens caused by the CIF Exception, FinCEN again extended the CIF Exception so that it would expire on May 31, 2003. See FinCEN Issuance 2001-1, 66 FR 32746 (June 18, 2001). On March 7, 2003, FinCEN published a Notice of intent to permit the CIF exception to expire on May 31, 2003. See 68 FR 10965 (Notice of Intent). The Notice of Intent solicited comment on a number of issues relating to the operation of the CIF Exception. On May 19, 2003, FinCEN published a notice that again extended the CIF Exception so that it would expire on December 1, 2003. See FinCEN Issuance 2003-1, 68 FR 26996. The purpose of this most recent extension was to allow time for FinCEN to conduct a study on the operation of the CIF Exception, and

to determine whether to remove, modify, or make permanent the Exception.

**II. Terms of CIF Exception**

FinCEN promulgated the Travel Rule in 1995. The Travel Rule requires financial institutions to include certain information in transmittal orders relating to transmittals of funds of \$3,000 or more, which must "travel" with the order throughout the funds transmittal sequence. Among these requirements is that each transmitter's financial institution and intermediary financial institution include in a transmittal order the transmitter's name and address. See 31 CFR 103.33(g)(1)(i)-(ii) and (g)(2)(i)-(ii). Subsequently, financial institutions represented to FinCEN that their ability to comply with the Travel Rule at all depended on their ability to use their automated customer information files, known as CIFs. Although an originating institution always maintains the originating customer's true name and address, the CIFs were sometimes programmed with coded or nominee names and addresses (or post office boxes). The reprogramming tasks involved in changing the CIFs were represented to be a significant barrier to compliance with the Travel Rule. In light of these burdens, and in the interest of obtaining prompt compliance, FinCEN promulgated the conditional exception.

The conditional exception provides that a financial institution may satisfy the requirements of 31 CFR 103.33(g) that a customer's true name and address be included in a transmittal order, only upon satisfaction of the following conditions:

(1) The CIFs are not specifically altered for the particular transmittal of funds in question;

(2) The CIFs are generally programmed and used by the institution for customer communications, not simply for transmittal of funds transactions, and are programmed to generate other than true name and street address information;

(3) The institution itself knows and can associate the CIF information used in the funds transmittal order with the true name and street address of the transmitter of the order;

(4) The transmittal order includes a question mark symbol immediately following any designation of the transmitter other than by a true name on the order;

(5) Any currency transaction report or suspicious activity report by the institution with respect to the funds transmittal contains the true name and

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**Notice of Expiration of Conditional Exception to Bank Secrecy Act Regulations Relating to Orders for Transmittals of Funds by Financial Institutions**

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of expiration of conditional exception following extension.

**SUMMARY:** FinCEN is giving notice that on July 1, 2004, a conditional exception to a Bank Secrecy Act (BSA) requirement will permanently expire. Upon expiration of that exception, financial institutions will no longer be able to comply with the terms of that BSA requirement by using coded information or pseudonyms for the name of a customer in a funds

address information for the transmitter and plainly associates the report with the particular funds transmittal in question.

The conditional exception further provides that it has no application to any funds transmittals for whose processing an institution does not automatically rely on preprogrammed and prespecified CIF name and address information. FinCEN's release promulgating the CIF Exception further informed financial institutions that any customer request for a nominee name in a CIF should be carefully evaluated as a potentially suspicious transaction. See 63 FR 3642.

### III. Results of CIF Exception Study

Since the issuance in May 2003 of the Notice of Intent, FinCEN has studied the use of the CIF Exception by financial institutions, and the implications of continuing the CIF exception for law enforcement investigations. The staff of the Federal Reserve Bank of New York assisted in this process by providing FinCEN with a sample of funds transfer activity using the Fedwire system, which gave FinCEN a one-day snapshot of the frequency and type of use of the CIF Exception. FinCEN also obtained the views of law enforcement officials and financial institutions on this issue. Ultimately, FinCEN formed a Subcommittee of the Bank Secrecy Act Advisory Group (BSAAG)<sup>1</sup> to advise FinCEN on the costs and benefits of maintaining, terminating, or modifying the Exception. The Subcommittee consists of officials representing FinCEN, the U.S. Department of the Treasury, the U.S. Department of Justice, the federal bank and securities regulators, the banking industry, and the securities industry. FinCEN presented the Subcommittee with the results of its factfinding and the Subcommittee also reviewed information provided by the New York Clearing House Association L.L.C.<sup>2</sup>

<sup>1</sup> The BSAAG is an advisory group consisting of representatives of government, financial institutions, and other interested persons. The BSAAG meets semiannually for the purpose of informing private sector representatives of the utility of Bank Secrecy Act reports and to advise the Secretary of the Treasury (or his designee) of potential enhancements or modifications to existing Bank Secrecy Act requirements.

<sup>2</sup> See Letter from Clearing House to Director James F. Sloan, FinCEN, October 20, 2003. The members of the Clearing House are: Bank of America, National Association; The Bank of New York; Bank One, National Association; Citibank, N.A.; Deutsche Bank Trust Company Americas; Fleet National Bank; HSBC Bank USA; JPMorgan Chase Bank; LaSalle Bank National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association. The following members of The Clearing House's affiliate, The Clearing House Interbank Payments Company L.L.C., also support

Based on its factfinding and input from the Subcommittee, FinCEN has made the following determinations. First, there is a powerful law enforcement interest, particularly in light of the tragic events of 9/11, in ensuring that a financial institution can identify funds transfers conducted by a terrorist suspect listed in a subpoena or other authorized search request. The use of coded names and pseudonyms effectively prevents an intermediary or a receiving financial institution from recognizing if it has records related to a government target. Second, to the extent that code names and pseudonyms are used in transmittal orders, such use appears to be limited to select private banking customers for confidentiality purposes. Because the use of coded names and pseudonyms is so infrequent, there is not a substantial cost involved in changing CIFs to reflect true names. Lastly, FinCEN understands that mailing addresses, rather than street addresses, are widely used by financial institutions in their CIFs. The banking industry contends that changing CIFs to reflect street addresses would require banks to examine each address in a CIF, and compare it with other customer information maintained by the bank, to determine whether the CIF address was a mailing address or street address. In addition, a new field would have to be created in the CIF to accommodate street address information, because customers would still want their statements and other information sent to their mailing address. Finally, each program that links the CIF to each of the bank's systems would have to be revised so that the correct address would be used for each application. According to the banking industry, each of these steps would have to be accomplished largely on a manual basis, resulting in significant costs to financial institutions. Law enforcement has acknowledged that the conduct of a reliable search is more dependent upon the use of true names than it is upon the use of street addresses.

Based upon these findings, and after weighing the competing interests involved, FinCEN has determined that revocation of the CIF Exception is appropriate. Regarding true name information, whatever legitimate interest is served by the use of coded names or pseudonyms in shielding the identity of a few select clients is

the positions taken in the October 20 letter: American Express Bank, Ltd.; The Bank of Tokyo-Mitsubishi, Ltd., New York Branch; and UBS AG, Stamford Branch. In addition, the American Banker's Association participated in the drafting of the October 20 letter and supports the views expressed in it.

overwhelmingly outweighed by the potential harm resulting from an intermediary or receiving financial institution not being able to determine whether it has records related to a government target. Weighed against the small number of clients for which the CIF Exception is used, the law enforcement interests predominate. FinCEN wishes to clarify that, although the Travel Rule does not permit the use of coded names or pseudonyms, the Rule does allow the use of abbreviated names, names reflecting different accounts of a corporation (e.g., XYZ Payroll Account), as well as trade and assumed names of businesses (D/B/A) or the names of unincorporated divisions or departments of businesses.

FinCEN has reached a different conclusion regarding the requirement to use a transmitter's street address. The term "address," as it is used in 31 U.S.C. 103.33(g), is not defined. FinCEN has previously issued guidance that has been interpreted as not allowing the use of mailing addresses, including post office boxes, in situations in which a street address is known to the transmitter's financial institution.<sup>3</sup> Because the use of the conditional exception for mailing addresses arises from a prior interpretation, rather than the explicit language of section 103.33(g) itself, FinCEN believes this issue is more appropriately addressed through a regulatory interpretation, rather than through a temporary exception.

FinCEN believes that the Travel Rule, like all Bank Secrecy Act rules, should be read with some flexibility so as to avoid the unnecessary burdening of financial institutions. After weighing the competing interests involved in whether to require street address information FinCEN has determined that the Travel Rule should be read to allow the use of mailing addresses. Consequently, for purposes of 31 CFR 103.33(g), the term address means either the transmitter's street address, or the transmitter's address maintained in the financial institution's automated customer information file so long as the institution maintains the transmitter's address on file and such address information is retrievable upon request by law enforcement.<sup>4</sup> Under no

<sup>3</sup> See *Clearing House Letter* (citing FinCEN Advisory Issue 3, Funds Transfers: Questions and Answers, June 1996 (Q&A no. 18)).

<sup>4</sup> Consistent with the final rules issued under section 326 of the USA Patriot Act (Pub. L. 107-56), an "address" for purposes of the Travel Rule, for an individual, is a residential or business street address, or an Army Post Office Box or a Fleet Post Office Box, or the residential or business street

circumstances may a financial institution use its own address or another financial institution's address in place of the customer's address, notwithstanding any prior guidance that appeared to allow the use of a financial institution's address under limited circumstances.<sup>5</sup> To avoid any confusion on the issue of addresses in transmittal orders, FinCEN, by this notice, hereby revokes Q&A no. 18 contained in FinCEN Advisory Issue 3 (June 1996) and Q&A no.16 contained in FinCEN Advisory Issue 7 (January 1997). FinCEN anticipates issuing a new set of frequently asked questions and answers regarding the application of the funds transfer rules very shortly. Nothing in this notice affects the obligation of a financial institution to comply with any other requirement imposed under the Bank Secrecy Act, including a customer identification program requirement imposed under Section 326 of the USA Patriot Act.

Finally, to give financial institutions the opportunity to take those steps necessary to comply fully with the Travel Rule, this Notice extends the conditional exception through July 1, 2004.

#### IV. FinCEN Issuance

By virtue of the authority contained in 31 CFR 103.55(a) and (b), which has been delegated to the Director of FinCEN, the effective period of the CIF Exception, as such Exception is set forth (as part of FinCEN Issuance 98-1, 63 FR 3640 (January 6, 1998)) under the heading "Grant of Exceptions" (63 FR 3641) is extended so that CIF Exception will expire on July 1, 2004, for transmittals of funds initiated after that date.

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address of next of kin or another contact individual for individuals who do not have a residential or business address. For a person other than an individual (such as a corporation, partnership, or trust), "address" is a principal place of business, local office, or other physical location. See 68 FR 25090 (May 9, 2003) (Final Rules for Customer Identification Programs) issued jointly with the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, National Credit Union Administration, Commodity Futures Trading Commission, and Securities and Exchange Commission. Note, however, that while the Section 326 rules apply only to new customers opening accounts on or after October 1, 2003, and exempt wire transfers from the definition of "account" for banks, the Travel Rule applies to all transmittals of funds of \$3,000 or more, whether or not the transmitter is a customer for purposes of the Section 326 rules.

<sup>5</sup> See FinCEN Advisory Issue 7, Funds "Travel" Regulations: Questions & Answers, January 1997 (Q&A no. 16) (stating that a financial institution must not use its own address "except where it is the actual address of record of the person").

Dated: November 21, 2003.

**William F. Baity,**

*Acting Director, Financial Crimes  
Enforcement Network.*

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