

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)¹ 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.²

¹ 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.

² *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.³ 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.⁴ Under no

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

⁴ 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