

Intermediary bank.
 Intermediary financial institution.
 Originator.
 Originator's bank.
 Payment date.
 Payment order.
 Receiving bank.
 Receiving financial institution.
 Recipient.
 Recipient's financial institution.
 Sender.
 Transmittal of funds.
 Transmittal order.
 Transmittor.
 Transmittor's financial institution.

§ 219.23 Recordkeeping and reporting requirements.

(a) *Domestic and international funds transfers by insured depository institutions.* The Board and the Treasury are authorized to promulgate jointly recordkeeping and reporting requirements for domestic and international funds transfers by insured depository institutions whenever the agencies determine that the maintenance of such records has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. These regulations are codified at 31 CFR 103.33(e). For the purposes of this subpart, the provisions of 31 CFR 103.33(e) apply only to funds transfers by insured depository institutions.

(b) *International transmittals of funds by financial institutions other than insured depository institutions.* The Board and the Treasury are required to promulgate jointly reporting and recordkeeping requirements for international transmittals of funds by financial institutions, including brokers and dealers in securities and businesses that provide money transmitting services. In prescribing these requirements, the Board and the Treasury take into account the usefulness of these records in criminal, tax, or regulatory investigations or proceedings and the effect the recordkeeping will have on the cost and efficiency of the payment system. These regulations are codified at 31 CFR 103.33(f). For the purposes of this subpart, the provisions of 31 CFR 103.33(f) apply only to international transmittals of funds.

§ 219.24 Retention period.

All records that are required to be retained by this subpart shall be retained for a period of five years. All these records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record and the amount of time that has expired since the record was made. Any records required to be retained by this subpart

shall be made available to the Board upon request.

By order of the Board of Governors of the Federal Reserve System, December 21, 1994.
William W. Wiles,
Secretary of the Board.

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505-AA46

Amendment to the Bank Secrecy Act Regulations Relating to Orders for Transmittals of Funds by Financial Institutions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: This final rule requires banks and nonbank financial institutions that act as transmitters' financial institutions and intermediary financial institutions in transmittals of funds to include certain information in transmittal orders sent to receiving financial institutions. A companion final rule (the final recordkeeping rule), published elsewhere in today's **Federal Register**, requires financial institutions to collect and retain the information that, under this final rule, must be included with transmittal orders.

The final recordkeeping rule sets forth collection of information and recordkeeping requirements with respect to certain transmittals of funds by financial institutions. The amount and type of information required to be collected and retained depends upon the type of financial institution, its role in a particular transaction, the amount of the transaction and whether the parties to the transaction are established customers of the financial institution. To ensure a full understanding of this final rule, the reader is encouraged to review its provisions together with those of the final recordkeeping rule.

This final rule is promulgated by Treasury under the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Annunzio-Wylie), which is part of the statute generally referred to as the Bank Secrecy Act. Annunzio-Wylie authorizes the Secretary of the Treasury to require financial institutions to maintain appropriate procedures to comply with the Bank Secrecy Act and guard against money laundering, and to carry out anti-money laundering programs. The final recordkeeping rule is promulgated jointly by the Board of

Governors of the Federal Reserve System (Federal Reserve Board) and by Treasury pursuant to a special statutory requirement under Annunzio-Wylie. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of the Financial Crimes Enforcement Network (FinCEN).

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: FinCEN, Office of Financial Enforcement ((202) 622-0400): A. Carlos Correa, Assistant Director for Rules and Regulations; Roger Weiner, Deputy Director; Peter Djinis, Director; FinCEN, Office of Legal Counsel: Stephen R. Kroll, Legal Counsel (703) 905-3534; Nina A. Nichols, Attorney-Advisor, (703) 905-3598.

SUPPLEMENTARY INFORMATION:

Background

This final rule is promulgated by Treasury under 31 U.S.C. 5318 (a)(2) and (h), which are part of the statute generally referred to as the Bank Secrecy Act (Pub. L. 91-508, codified at 12 U.S.C. 1829b and 1951-1959, and 31 U.S.C. 5311-5329), and which were added to the Bank Secrecy Act by Annunzio-Wylie. 31 U.S.C. 5318 (a)(2) and (h) authorize the Secretary of the Treasury to require financial institutions to maintain appropriate procedures to comply with the Bank Secrecy Act and guard against money laundering, and to carry out anti-money laundering programs. The final recordkeeping rule is promulgated jointly by the Federal Reserve Board and by Treasury pursuant to a special statutory requirement for such joint issuance contained in 12 U.S.C. 1829b(b), added to the Bank Secrecy Act by section 1515 of Annunzio-Wylie. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

On August 31, 1993, Treasury and the Federal Reserve Board jointly issued a proposed recordkeeping rule (58 FR 46014) requiring financial institutions to obtain and retain information relating to certain transmittals of funds. Treasury also issued a companion proposed travel rule (58 FR 46021, August 31, 1993), which was subsequently modified (58 FR 51269, October 1, 1993), proposing to require any transmittor's financial institution involved in a transmittal of funds to include in its corresponding transmittal order:

(1) The name and address of the transmittor and the transmittor's deposit account number, if the payment were ordered from a deposit account;

(2) The amount of the transmittal of funds;

(3) The execution date of the transmittal order;

(4) The identity of the recipient's financial institution; and,

(5) Either the name and address or the account number of the recipient, if received with the transmittal order.

The proposed travel rule would have required any receiving financial institution acting as an intermediary financial institution to include in its corresponding transmittal order the following information, if received from the sender:

(1) The name and address of the transmitter and the deposit account number of the transmitter;

(2) The amount of the transmittal of funds;

(3) The execution date of the transmittal order;

(4) The identity of the recipient's financial institution;

(5) Either the name and address or the account number of the recipient, if received with the transmittal order; and,

(6) Either the name and address or the numerical identifier of the transmitter's financial institution.

Overview

This final rule will assist law enforcement investigations of money laundering involving transmittals of funds by requiring users of transmittals of funds to provide additional identifying information. Together with the final recordkeeping rule, this final rule will help remedy the difficulties presently encountered by law enforcement in cases involving transmittals of funds in which the transmittal orders do not include the transmitters' and recipients' names or other identifying information, and cases involving transmittals of funds in which such identifying information is not conveyed to intermediary financial institutions. The requirement that transmittal orders include complete transmitter information, as well as recipient information received by the financial institution with the transmittal order, may discourage money launderers from attempting to abuse the payment and message systems and should complicate their ability to do so.

Treasury will monitor experience under this final rule to assess its usefulness to law enforcement and its effect on the cost and efficiency of the payments system. Within 36 months of the effective date, Treasury will review the effectiveness of this final rule and will consider making any appropriate modifications.

Comments

One hundred thirteen (113) comments were received in response to the proposed recordkeeping rule and the proposed travel rule. Treasury has carefully considered each comment in drafting this final rule.

Effect of Proposed Changes to Fedwire System

The proposed travel rule provided for a thirty (30) day comment period concluding on October 4, 1993. Many of the commenters noted that they could neither comment nor initiate changes to their internal wire transfer systems until the Federal Reserve Board announced its proposed changes in the Fedwire format. Treasury believes that the comments it received relating to Fedwire were helpful, and these comments have been taken into account in framing this final rule.

Commenters on the proposed travel rule were particularly concerned with the difficulty of including the required information on Fedwire, which, unlike the Clearing House Interbank Payments System (CHIPS) (operated by the New York Clearing House) and the Society for Worldwide Interbank Financial Telecommunications (S.W.I.F.T.) system, does not have sufficient space in the fields in which to include complete originator and beneficiary information. Commenters also noted that it would be difficult to map information to Fedwire from S.W.I.F.T., CHIPS and other proprietary systems, and to comply with the proposed travel rule's requirements by the proposed effective date.

One commenter suggested that the proposed travel rule be withdrawn. This commenter characterized the proposed travel rule as unworkable and premature because the Fedwire format had to be expanded, and conventions and protocols coordinated before the proposed travel rule could issue. Other commenters raised similar concerns.

As more fully discussed below, this final rule recognizes the difficulty that financial institutions will have in including all of the required information within the Fedwire format, and makes appropriate allowances. In light of these allowances, and because the Federal Reserve Board has adopted an expanded Fedwire format (published elsewhere in today's **Federal Register**), this final rule is promulgated at the appropriate time.

Effective Date

The proposed travel rule provided for an effective date twelve months following publication of a final rule. Many commenters believed that the

proposed effective date twelve months after publication of a final rule was too soon; they suggested that no effective date be announced until the Federal Reserve Board had published proposed changes to Fedwire, and that any proposed effective date take into account those proposed changes. Alternatively, commenters suggested that the effective date be delayed until twelve months following implementation of Fedwire format changes. Finally, one bank suggested that the effective date of the proposed rule coincide with the effective date of changes to the Fedwire format.

The effective date of this final rule and of the recordkeeping rule is January 1, 1996. As noted, this final rule allows for the fact that a financial institution will not be able to include all otherwise required information in Fedwire transfers until the format changes have been implemented by that institution.

Mapping Issues

The proposed travel rule would have required that certain information be included, at the time of transmittal, in a transmittal order transmitted to a financial institution by any means, including any funds transfer system (e.g., Fedwire, S.W.I.F.T. and CHIPS) or other system for transmittals of funds. This would have meant, for example, that a bank receiving a S.W.I.F.T. message would have been obligated to include all required information, if received, in its corresponding Fedwire transmittal order, and that any originator's bank issuing a Fedwire transmittal order would have had to include all of the required information in that order.

Currently, the Fedwire fields designated for originator and beneficiary information do not contain sufficient space to include all of the information required by this final rule. However, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision have issued a policy encouraging banks to use optional fields where possible to include complete originator and beneficiary information in Fedwire payment orders. A similar statement was issued by the Federal Financial Institutions Examination Council (FFIEC). (See, FFIEC Statement dated March 11, 1993, 58 FR 14400, March 17, 1993.)

While many commenters acknowledged that complete originator and beneficiary information could be included in S.W.I.F.T. and CHIPS payment orders, they objected to the use

of optional Fedwire fields to include such information. The commenters observed that the proposed travel rule failed to designate which optional fields should contain which items of information and failed to assign priority to such items in the event that available optional fields could not accommodate all required information. Commenters believed that the lack of industry standards prescribing placement of originator and beneficiary data in optional fields would result in confusion and inefficiency, producing erroneous entries, advices and misapplication of funds. Commenters also noted that the use of optional fields would require excessive manual intervention in what is largely an automated system, causing costly inefficiencies by delaying pass-through payments, which, according to one commenter, make up 85% of all transfers.

Many commenters suggested the formation of a joint task force including representatives of the financial community, Treasury and the Federal Reserve Board to establish industry standards for the use of optional fields in Fedwire and a timetable for implementation.

The Federal Reserve Board published its Proposed Expansion of the Fedwire Funds Transfer Format on December 1, 1993 (58 FR 63366), and a finalized expanded Fedwire format is published elsewhere in today's **Federal Register**. Implementation is to be completed by year-end 1997. Once implemented by financial institutions, the modified Fedwire format will permit inclusion of complete originator and beneficiary information. Under this final rule a financial institution will not be required to include all available information identifying transmitters and recipients in Fedwire payment orders until the financial institution has implemented the new Fedwire format. However, Treasury joins the FFIEC in encouraging financial institutions to include complete transmitter and recipient information in Fedwire payment orders using optional fields.

Threshold

Many nonbank financial institutions commented that the proposed recordkeeping rule's lack of a threshold exempting smaller value transfers would make implementation inordinately costly. One commenter noted that 95% of the two million transmittals it conducted annually involved less than \$1,000; 98% fell below \$3,000; and, 99.96% fell below \$10,000. Commenters complained that the enormous expense they would incur

in obtaining, maintaining and transmitting data for smaller value transmittals could not be justified by any benefit to law enforcement. Other commenters argued that the absence of any threshold would make it impossible to conduct transmittals in emergencies and in situations in which a transmitter phones, faxes or writes in funds transmittal instructions (for example, in the case of a transmittal of funds to someone whose identification documents have been stolen).

Treasury and the Federal Reserve Board have considered these comments and have established a threshold of \$3,000 for the final recordkeeping rule. Treasury has determined that the same threshold should apply to this final rule. Therefore, financial institutions will not be required to include the specified information in transmittal orders involving less than \$3,000 or the foreign equivalent. (Financial institutions should determine the U.S. dollar equivalents of transfers in foreign funds based on the spot exchange rate at the time of a transfer to determine whether a foreign-denominated transfer exceeds the \$3,000 threshold.)

Treasury presently encourages financial institutions to report to the appropriate federal law enforcement agency or agencies transmittals of funds that are structured in amounts of less than \$3,000 to evade the requirements of this final rule and the final recordkeeping rule. Treasury intends to issue for comment proposed regulations that would require financial institutions to report suspicious transactions and to establish anti-money laundering measures, including "know your customer" policies and programs. Treasury will monitor the effectiveness of such policies and programs, as applied to transmittals of funds, and will consider future modification of the \$3,000 threshold or other provisions of this final rule, if appropriate and necessary to counter the evasion of requirements through structuring.

Contents of Payment Orders

If a transmittal order is funded from an account, the proposed travel rule would have required the transmitter's financial institution to include in the transmittal order the following: the name and address of the transmitter; the transmitter's account number; the amount and execution date of the transmittal; the identity of the recipient's financial institution; and either the name and address or the account number of the recipient (if received with the transmittal order). The proposed travel rule also would have required any receiving financial

institution acting either as an intermediary bank or an intermediary financial institution to include in its transmittal order the same information, if received from the sender.

Several commenters objected to the proposed requirement that the transmitter's account number be included in the transmittal order. Commenters noted that such information is relevant only to the transmitter's financial institution, is regarded by many as confidential, and increases the risk of fraud if included in a transmittal order. Commenters questioned law enforcement's need to have account information on transmittal orders because such information is easily retrievable through records using the account holder's name. The inclusion of this information, commenters argued, would clutter transmittal orders.

Treasury has concluded that the transmitter's account number must be included in transmittal orders, but only where an account is debited to fund all or part of the transmittal. This information will be particularly useful to law enforcement in cases in which delay occasioned by a search for account information would hinder the success of an investigation. Inclusion of the information is feasible in both S.W.I.F.T. and CHIPS messages, and (until proposed Fedwire format changes are implemented) information can be included in optional Fedwire fields if there is not sufficient space in the originator field.

Treasury has determined that the inclusion of account numbers in transmittal orders will present only a minor increase in the risk of fraudulent transfers. Banks generally have security procedures that include passwords, codewords and, in the case of electronic transmissions, confirmation to ensure that only authorized parties issue payment orders. These and other protective measures greatly reduce the potential for fraud, to a level at which that risk does not outweigh the immediate and tangible benefit to law enforcement derived from the inclusion of account information in transmittal orders.

With regard to arguments based on the confidentiality of account numbers, Treasury notes that account numbers are routinely included (and are certainly not treated as confidential) in cases in which an account is the recipient of a transmittal of funds. Furthermore, account numbers are routinely carried on the face of checks and other payment documents that are widely circulated through and outside of banks. Finally, Treasury believes that the fact that a

transmitter's account number is available through customer account records does not render the inclusion of information in a transmittal order superfluous.

Commenters requested clarification whether to record the amounts of transmittals involving foreign funds in the foreign exchange or its U.S. dollar equivalent. Treasury does not intend to change industry practice; therefore, in recording the amount transmitted, a financial institution may record either the amount of foreign funds or the U.S. dollar equivalent, in accordance with the financial institution's standard practice.

Bifurcated Transmittal Orders

In some instances, to effect payment across multiple time zones, a bank may have to bifurcate a transmittal order into a cover payment order and an underlying direct payment order. One commenter noted that inclusion of a recipient's name and address in both the transmittal order and the related cover order of the recipient might create a risk of duplicate payment.

It appears to Treasury that bifurcated transmittal orders are comprised of two separate transmittals of funds. Generally, the direct payment order is a transmittal from the originator to the recipient, and the cover payment order is a bank to bank transmittal, which may be effected through intermediary banks. In this analysis, the transmittal order for the cover payment order would not have to identify the recipient of the direct payment order, only the recipient bank. If appropriate, Treasury will consider issuing guidance on this question in the future.

Closed Systems

The proposed travel rule would have required any receiving intermediary financial institution accepting a transmittal order to include in a corresponding transmittal order either the name and address or the numerical identifier of the transmitter's financial institution. The proposed travel rule also would have required that any transmitter's financial institution, as well as any receiving intermediary financial institution, accepting a transmittal order to include in a corresponding transmittal order the identity of the recipient's financial institution.

Many commenters noted the difficulty of identifying the transmitter's financial institution and the recipient's financial institution in transmittals through closed systems. A closed system is a transmittal of funds service that permits a recipient to pick up transmitted funds

at any location within the closed system. Such a service can be either entirely domestic or international and does not rely on banks or other outside financial institutions to effect payment to the intended recipient; transmittals of funds are handled entirely by the service's own agents. Finally, and most important, complete records relating to any closed system transmittal of funds are maintained in one central location.

Commenters also noted that the requirement to identify the transmitter's financial institution might increase the risk of fraud and abuse. For example, the closed system agent serving as the recipient's financial institution could identify and contact the closed system agent that served as the transmitter's financial institution, and establish a funds transmittal service that would neither be conducted by the closed system nor be subject to its control. Commenters also noted that identification of the recipient's financial institution is difficult or impossible in most cases, because the transmitter may not know where the recipient will pick up the transmitted funds.

Treasury believes that the potential for fraud as described by the commenters may be best addressed by the closed systems and their agents themselves. This final rule requires that the transmitter's financial institution be identified in the transmittal order in all cases. However, in cases involving closed systems as described above, the requirement to identify the recipient's financial institution may be satisfied by including the closed system's name in the transmittal order. Although such information will not identify the specific closed system office that served as the recipient's financial institution, law enforcement's needs will be adequately met by records that are maintained and made available to law enforcement as required by regulation.

Executive Order 12866

Treasury finds that this final rule is not a significant rule for purposes of Executive Order 12866. This final rule is not anticipated to have an annual effect on the economy of \$100 million or more. It will not affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. It creates no inconsistencies with, nor does it interfere with actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues. A cost and benefit analysis is therefore not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities.

The small entities that will be affected by this final rule include small banks and nonbank money transmitting businesses. This final rule exempts transmittals of funds in amounts of less than \$3,000; this exemption should particularly benefit nonbank providers of money transmitting services that handle smaller value transfers. Treasury does not believe that compliance with this final rule will require small entities to have specialized professional skills that are not generally available to them.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information and the burden estimate should be directed to FinCEN, Office of Legal Counsel, 2070 Chain Bridge Road, Vienna, VA 22182, or to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, D.C. 20503.

Drafting Information

The principal author of this document is FinCEN. Technical assistance was also provided by the Federal Reserve Board and the Department of Justice.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5329.

2. Section 103.33 is amended by adding new paragraph (g) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(g) With respect to a transmittal of funds in the amount of \$3,000 or more by a financial institution:

(1) The transmitter's financial institution shall include in the transmittal order, at the time it is sent to the receiving financial institution, the following information:

(i) The name and, if the payment is ordered from an account, the account number of the transmitter;

(ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:³

³For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmitter's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmitter;

(ii) The address of the transmitter, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:⁴

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmitter's financial institution.

Dated: December 19, 1994.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

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⁴For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.