

collection. A few commenters suggested that money launderers simply would find alternative methods to circumvent the recordkeeping requirements, diluting the rule's effectiveness.

Three of the four nonbank providers of money transmitting services that commented strongly opposed the proposed requirements. One commenter stated that the Treasury and the Board must consider the fundamentally different nature of nonbank financial institution operations before adopting a final rule. These commenters indicated that the burden on nonbank financial institutions would clearly and substantially outweigh the reasonably anticipated benefit to law enforcement.

Other commenters indicated that it was difficult to assess the burden of the proposal because certain requirements, such as retrievability, were not clearly defined. Many commenters suggested that more types of transactions be exempted from the rule.

Based on the comments received, the Treasury and the Board have modified the proposed rule to reduce the burden associated with the rule, while maintaining the usefulness of the rule to law enforcement agencies. The final rule exempts wire transfers below \$3,000, thereby reducing the burden of collecting, maintaining, and retrieving wire transfer records. This exemption should particularly benefit nonbank providers of money transmitting services, which typically handle smaller-value transfers. Other modifications to the rule limit instances where verification is required. In addition, the final rule clarifies the verification and retrievability requirements. As a result of these changes, the Treasury and the Board believe that the benefit of having the information available to law enforcement agencies outweighs the burden associated with the final rule. Although the final rule cannot prevent money launderers from using wire transfers for illegal purposes, the Treasury and the Board believe that the rule will help trace the proceeds of illegal activity and identify the participants in money laundering schemes.

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

B. Section-by-Section Analysis

Section 103.11 Meaning of Terms

The proposed rule added new definitions to the existing definitions in the Treasury rules. A number of these new definitions applicable to banks were identical to the terms used in Uniform Commercial Code Article 4A (UCC 4A) (e.g., originator, originator's bank, payment order, and others). In addition, the proposed rule added a number of new definitions applicable to transactions by nonbank financial institutions. These definitions were intended to parallel the equivalent definitions in UCC 4A (e.g., transmitter, transmitter's financial institution, transmittal order, and others). In order to preserve as much uniformity as possible, some changes have been made to certain proposed definitions to conform them more closely to the UCC 4A definitions. Several definitions (e.g., accept, execution date, payment date) are defined so as to make their usage also appropriate for transactions involving nonbank financial institutions; otherwise, they are similar, but not always equivalent in practice, to the UCC 4A definitions. For example, under the final rule's definition of accept, when a beneficiary's bank receives a transmittal order for a recipient that is the customer of a nonbank financial institution holding an account at the beneficiary's bank, the beneficiary's bank would accept the transmittal order by executing a corresponding transmittal order to the nonbank financial institution, rather than by crediting the account of the nonbank financial institution, which would constitute acceptance under UCC 4A. The definition of intermediary financial institution was revised to include an intermediary bank. The definitions of transmitter, transmitter's financial institution, recipient, and recipient's financial institution also were revised to clarify the scope of these definitions for transmittals of funds involving both a bank and nonbank financial institution.

The Official Comment to UCC 4A is helpful in understanding many of the definitions adopted in the final rule. Terms used in this rule that are not defined have the meaning given them in the UCC, unless otherwise indicated.

One bank asked whether the term payment order includes drawdowns. Under the UCC 4A-104 Official Comment, this determination depends generally on whether the drawdown is a credit transfer.¹

¹ Under the Official Comment, a drawdown transfer is a funds transfer if the person transferring

Another commenter asked whether a payment order includes a transaction where Bank A instructs its correspondent, Bank B, to debit Bank A's account with Bank B and pay a beneficiary that holds an account with Bank B. This instruction meets the definition of payment order in § 103.11(y) and under UCC 4A-103. In this funds transfer, Bank B is the beneficiary's bank and Bank A is either an intermediary bank or an originator's bank, depending on the circumstances, and must keep the appropriate records of the payment order.

Another commenter described a situation where a depositor orders his account closed by telephone and instructs the bank to remit the balance with a cashier's check mailed to the depositor; the commenter asked whether this transaction is a funds transfer under the regulation. This transaction is not a funds transfer because it is not a series of transactions under UCC 4A-104(a); rather, it is one transaction, a withdrawal of funds from the bank by a cashier's check.

Several credit union commenters objected to the inclusion of credit unions in the definition of bank and stated that credit unions should be considered nonbank financial institutions. The longstanding definition of bank in the Treasury's existing Bank Secrecy Act regulations (31 CFR 103.11(b))² includes credit unions. The definition of bank has not been changed in the final rule.

Several commenters requested clarification of the meaning of the terms originator and beneficiary. In particular, these commenters asked who the originator and beneficiary would be in instances where either a corporation or a bank's trust department sends or receives a funds transfer. When an employee sends a payment order to the originator's bank as agent for a corporation, the corporation, and not the employee, is the originator. When a

the funds either instructs Bank A to transfer funds from its account at Bank A to its account at Bank B or if Bank A has an agreement with the person whereby Bank A is authorized to follow instructions of Bank B, as agent of the person, to transfer funds from the person's account at Bank A to Bank B. In both instances, the transfer is a *credit* transfer because the instruction goes from the person (although in one case via Bank B as agent) to Bank A to send the funds to Bank B. A funds transfer under UCC 4A must be a credit transfer. If there is no agreement between the person and Bank A that Bank B act as agent for the person, then a request or instruction from Bank B to Bank A to transfer funds from the person's account at Bank A to Bank B would be a *debit* transfer and would not be a funds transfer under UCC 4A or the final regulation.

²The citation for the definition of bank will become 31 CFR 103.11(c) when this rule becomes effective.