

bank's trust department makes a funds transfer as trustee for one or more trust accounts, the bank is the originator. If, however, the bank's trust department makes the funds transfer on the specific instructions of a trust account holder, then the account holder is the originator because it is the sender of the first payment order to the bank. In both cases, the bank is the originator's bank.

Two commenters requested that a definition be added for the term executing, which is used in the definition of the term accept. Both commenters suggested adoption of the UCC 4A-301 definition of executed. Certain definitions from UCC 4A are included in the regulation for reference. Other terms, such as execute, that are not defined specifically in the regulation, but are defined in relevant provisions of the UCC, will have the meaning given them in the UCC, unless otherwise indicated.

One commenter requested that the term domestic bank be defined. The terms domestic and bank are defined in § 103.11. Under these definitions, a domestic bank is one that is located within the United States and would include branches and agencies of foreign banks located and conducting business within the United States.<sup>3</sup> A domestic financial institution is one that is located in the United States. No separate definition of domestic bank has been added to the regulation.

As proposed in § 103.33(f), nonbank financial institutions must collect, verify and retain a record of the originator's identity, because these institutions likely would send or receive transmittals of funds for persons with no account relationship, and therefore, no existing records. Many commenters, both banks and nonbank financial institutions, noted that there are several types of ongoing customer relationships, other than those persons that have a deposit account or loan with a bank, or have an account with a financial institution that is a broker or dealer in securities, that would result in the financial institution having the desired information about the customer in its customer record files. By acknowledging these relationships, the requirements to verify information on noncustomers could be minimized.

<sup>3</sup> 31 CFR § 103.11(s), which will become 31 CFR § 103.11(nn) when this rule becomes effective, defines United States to include the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the territories and possessions of the United States.

The final rule limits the verification requirements to originators/transmitters and beneficiaries/recipients that are not established customers. An established customer is defined as a person with an account with a financial institution or a person with respect to which the financial institution has obtained and maintains on file the name and address, as well as the customer's taxpayer identification number or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information. Such relationships with banks may include, but are not limited to, deposit accounts, loan agreements, trust accounts, custody accounts, and mutual fund accounts. Such relationships with nonbank financial institutions may include, but are not limited to, accounts with broker/dealers and ongoing contractual relationships between providers of money transmitting services and business customers.

Two commenters requested that a definition of copy be included in the rule to clarify that new electronic technology, such as optical disk storage, is allowed. The rule has been modified to explicitly allow retention of an electronic record, which would include electronic data storage methods.

Two commenters requested that all automated teller machine (ATM) and point-of-sale (POS) transactions be exempted from the rule. One bank noted that ATMs are used increasingly for legitimate business transactions that are not governed by the Electronic Fund Transfer Act. Unless a financial institution could exclude all ATM transactions from the recordkeeping requirements, it would be necessary for the institution to develop new systems and procedures to ensure compliance. The final rule excludes from the definitions of funds transfer and transmittal of funds all transfers governed by the Electronic Fund Transfer Act, as well as any other funds transfers that are made through an automated clearinghouse, ATM, or POS system. The question of the treatment, under the Bank Secrecy Act, of transfers governed by the Electronic Fund Transfer Act will be studied by the Treasury.

#### *Section 103.33. Records to be made and retained by financial institutions.*

The proposed recordkeeping requirements varied depending on the type of financial institution, its role in the particular funds transfer, and the relationship of the parties to the transaction with the financial

institution. As proposed, the rule was structured into three separate sections to apply to banks, nonbank financial institutions, and broker/dealers. The proposed rule assumed that nonbank financial institutions other than broker/dealers would not have customers with account relationships and thus required these institutions to verify and retain a record of the identity of all their customers. Many commenters, however, indicated that nonbank financial institutions do have established customers for which identification information is maintained on file; thus, there is no need to reverify the information. The final rule recognizes that many nonbank financial institutions have established customers; therefore, the recordkeeping requirements for nonbank financial institutions and broker/dealers, contained in proposed sections (f) and (g), have been combined in the final rule.

The requirements imposed by § 103.33(e) for banks and § 103.33(f) for nonbank financial institutions in the final rule are similar. The section-by-section analysis in this notice, which uses the terminology associated with funds transfers through banks, also is applicable to transmittals of funds through nonbank financial institutions, except where specifically noted.

#### *Section 103.33(e)(1) and Section 103.33(f)(1).*

*Recordkeeping Requirements*—The proposed rule required that originator's banks retain, for each payment order accepted, the originator's name and address, the amount, date, payment instructions received with the payment order, beneficiary bank identification, and, if received with the payment order, the beneficiary's name and address or the beneficiary's account number. Intermediary banks and beneficiary's banks would be required to retain a copy of each payment order they accept.

*Dollar Threshold*—Many commenters recommended that a threshold be established to exclude funds transfers under a certain dollar amount from the requirements. Commenters noted that a dollar threshold would greatly reduce the burden of complying with the regulation by decreasing the number of records retained, thereby minimizing the storage and retrievability burden, and by decreasing the number of funds transfers where identification must be verified. Many commenters recommended a \$10,000 threshold, which is the threshold for Currency Transaction Reports. The next most-frequently suggested threshold was \$3,000, which is the threshold for