

identifying the beneficiary, the final rule provides an exception to the requirement that the bank retain as many means of identifying the beneficiary as provided by the originator, until completion of the bank's conversion to the expanded Fedwire format. For nonbank financial institutions, this temporary exception is limited to domestic brokers and dealers in securities, because the Treasury and the Board believe that only this category of nonbank financial institution is likely to send electronically transmittals of funds that ultimately are effected through Fedwire. (See elsewhere in today's **Federal Register** for the Board's notice of its adoption of an expanded Fedwire funds transfer format.)

As noted earlier, the Treasury and the Board will monitor experience of law enforcement and the industry under this rule. If the Treasury and the Board determine that law enforcement efforts are hindered materially due to lack of beneficiary information in the records retained under this rule, the Treasury and the Board will consider mandating that beneficiary information be retained for all payment orders. In addition, the suspicious transaction reporting and anti-money laundering policy and program rules due to be issued for comment by the Treasury in 1995 should reduce materially any wrongdoing stemming from the fact that an originator's bank is not explicitly required by this rule to obtain beneficiary information.

*Other Questions*—Another commenter asked whether the payment amount to be retained in a bank's records under this rule must be denominated in U.S. dollars or whether it could be denominated in a foreign currency. The payment amount retained under the rule should be the amount as denominated in the payment order. The recordkeeping rule applies to transfers in foreign denominations above the equivalent of \$3,000. Banks should determine the U.S. dollar equivalent of the transfer based on the spot exchange rate at the time of the transfer to determine whether a foreign-denominated transfer exceeds the \$3,000 threshold.

One commenter requested an explanation of payment instructions that are required to be retained by the originator's bank. This commenter questioned whether payment instructions included instructions received orally (in person or over the telephone), or by letter, facsimile, or electronic terminal. Any payment instructions given by the originator, either oral or written, must be retained if received with the payment order. The

originator's bank may retain either written documentation or an audio recording of the originator's oral instructions. Such payment instructions may include the purpose of the funds transfer, directions to the beneficiary's bank regarding how to notify the beneficiary of the receipt of funds (e.g., advise by phone), or other information.

*Section 103.33(e)(2), (e)(3), and (e)(5) and Section 103.33(f)(2), (f)(3), and (f)(5)*

*Additional Requirements for Persons Other Than Established Customers*—The proposed rule required banks to verify the name and address of the originator, if the originator does not have a deposit or loan account, and to retain a record of the verified information, the type of identification reviewed, the number of the identification document (e.g., driver's license), as well as a record of the originator's social security number, alien identification number, or employer identification number. Some commenters, primarily nonbank financial institutions acting for non-account holders, argued that the proposed verification requirement would be very burdensome to their operations. Many commenters expressed concern with the requirement to verify the name and address, and to record the identification number of an originator or beneficiary that is not an account holder. A few commenters noted that they may be forced to refrain from doing business with non-account holders, due to the burden of the rule's verification requirements. A few commenters asked whether the verification requirement relates to the person placing the order or the originator.

By limiting the verification requirement to originators and beneficiaries that are not established customers and by excluding funds transfers under \$3,000 from the rule, the number of instances where verification is required has been reduced substantially, with a commensurate reduction in compliance burden. The final rule requires that if a payment order is from an originator other than an established customer and is made in person, the originator's bank shall verify the identity of the person placing the payment order. If the person does not identify another party on whose behalf the funds transfer is being made, then the person is considered the originator.

If it accepts the payment order, the originator's bank shall obtain and retain a record of the person's name and address, the type of identification reviewed, the number of the identification document (e.g., driver's

license), as well as the taxpayer identification number or, if none, alien identification number or passport number and country of issuance. If the originator's bank knows that the person placing the payment order is not the originator, it shall obtain and retain a record of the originator's taxpayer identification number or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order. In cases where an agent or representative of the originator places the payment order and does not know the originator's identification number or in cases where the originator or the person placing the payment order does not have such a number, the originator's bank must note in the record the lack thereof.

Two commenters questioned whether the rule requires an originator's bank to obtain and verify the originator's identity if the originator's payment order is made via phone, fax, electronic link, or mail. In situations where the originator is not present to provide the required information, there is no opportunity to verify it. Under the final rule, if the payment order is not made in person, the originator's bank is not required to verify the identity of the person or to retain information pertaining to an identification document used for verification, but is required to retain a copy or record of the method of payment (e.g., check or credit card transaction) for the funds transfer.

For payment of the proceeds of a funds transfer in person by a beneficiary's bank to a beneficiary that does not have a deposit or loan account, the proposal required that a beneficiary's bank obtain and retain a record of the beneficiary's name and address, and social security number, alien identification number, or employer identification number, or note in the record the lack of such number. Several commenters, however, noted that if the proceeds of a funds transfer are mailed to the beneficiary, there is no opportunity to obtain the beneficiary's identification number.

In the final rule, if the proceeds are delivered in person to a beneficiary other than an established customer or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain information similar to that required to be retained by originator's banks for originators that are not established customers. If the proceeds are delivered to the beneficiary other than in person, the final rule requires the beneficiary's bank to retain a copy of the check or other instrument