



FEDERAL RESERVE BANK
OF DALLAS

WILLIAM H. WALLACE
FIRST VICE PRESIDENT
AND CHIEF OPERATING OFFICER

November 13, 1990

DALLAS, TEXAS 75222

Circular 90-85

TO: The Chief Executive Officer of each member bank and others concerned in the Eleventh Federal Reserve District

SUBJECT

Proposed Bank Secrecy Act Amendment Relating to Recordkeeping for Funds Transfers by Banks and Transmittals of Funds by Other Financial Institutions

DETAILS

The Department of the Treasury has proposed an amendment to the Bank Secrecy Act that would require enhanced recordkeeping for funds transfers by banks and transmittals of funds by other financial institutions.

Specifically, a bank or other financial institution would be required to obtain identifying information regarding the originator and beneficiary of a funds transfer and retain such information at the bank or financial institution. In some instances, the proposed amendment would prohibit the completion of a funds transfer without obtaining the required information.

Comments on this proposed amendment to the Bank Secrecy Act should be forwarded to

Amy G. Rudnick, Director
Office of Financial Enforcement
Office of the Assistant Secretary
(Enforcement)
Department of the Treasury
Room 4320
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Comments are due by November 29, 1990.

ATTACHMENT

A copy of the proposed amendment, as published in the Federal Register on October 15, 1990, is attached.

MORE INFORMATION

For further information regarding the proposed amendment, you may contact Linda Noonan, Senior Counsel for Financial Enforcement, Office of the Assistant General Counsel (Enforcement), Department of the Treasury, at the above address or by telephone at (202) 566-2941. For additional copies of this circular, please contact the Public Affairs Department at (214) 651-6289.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William H. Waller".

31 CFR Part 103**Proposed Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers by Banks and Transmittals of Funds by Other Financial Institutions**

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: To assist in the investigation and prosecution of money laundering and other financial crimes, Treasury is proposing enhanced recordkeeping requirements relating to funds transfers by banks and to transmittals of funds by other financial institutions subject to the Bank Secrecy Act. Each domestic bank involved in a funds transfer will have to retain certain information about the transfer. The amount and type of information will depend upon the bank's role in the funds transfer process. In addition, banks will be required to verify the name and address and obtain additional identifying information on originators and beneficiaries of funds transfers who are not deposit account holders. Financial institutions other than banks that transmit and receive funds will have similar recordkeeping requirements. Finally, the regulations permitting Treasury to target for reporting certain transactions with foreign financial institutions are proposed to be amended to permit Treasury to require reports of all funds transfers by banks and transmittals of funds by financial institutions other than banks.

DATES: Comments are due on November 29, 1990.

ADDRESSES: Comments should be sent to Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Linda Noonan, Senior Counsel for Financial Enforcement, Office of the Assistant General Counsel (Enforcement), (202) 566-2941.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Public Law 91-508 (codified at 12 U.S.C. 1829b and 1951-1959, and 31 U.S.C. 5311-5326), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax and regulatory matters. The primary purpose of the Bank Secrecy Act is to identify the sources, volumes and movements of

moneys moving into and out of the country and through domestic financial institutions. See H.R. Rep. No. 975, 91st Cong., 2d Sess. 11-13 (1970). In exercising this far-reaching authority, Treasury has been mindful of issues concerning implications of foreign laws and has been careful not to encumber the free flow of legitimate international trade and commerce.

On October 31, 1989, Treasury published an Advance Notice of Proposed Rulemaking to deal with the problem of money laundering through the international funds transfer system. 54 FR 45769. Funds transfers are a series of messages to and through one or more banks that are intended to result in the payment of funds from one person to another. This usually is accomplished through a debit to the account of the person sending the money (the "originator") and a corresponding credit to the person receiving the funds (the "beneficiary").

Money laundering is a vital component of drug trafficking and other criminal activity throughout the world. Currently, illegal funds are being transferred domestically and from and to the United States and "cycled" through intricate money laundering schemes involving international payments, particularly funds transfers. Several recent money laundering operations, which have been discovered by Treasury and other Federal law enforcement agencies, such as Operations C-Chase and Polar Cap, are testaments to this phenomenon. In an April 26, 1989, submission to the Director, Office of National Drug Control Policy, reprinted in the Congressional Record of May 18, 1989, the American Bankers Association stated that, "Funds transfers, which are essentially unregulated, have emerged as the primary method by which high volume launderers ply their trade." 135 Cong. Rec. S5555.

The Advance Notice of Proposed Rulemaking focused on funds transfers through banks. There is also a serious money laundering problem involving non-bank financial institutions that are subject to recordkeeping and reporting requirements of the Bank Secrecy Act, such as transmitters of funds and telegraph companies. Therefore, this proposal also addresses recordkeeping by these financial institutions with respect to funds they transmit and receive.

Major Comments Received to the Advance Notice of Proposed Rulemaking

In the Advance Notice, Treasury set forth seven different regulatory

proposals that it was considering implementing. There were a total of 114 comments on these proposals. Of those comments, 81 were from banks. The remainder were from non-bank financial institutions, trade associations, government agencies, and other miscellaneous institutions and individuals. Generally, most of the commenters noted their opposition to drugs and their desire to assist in fighting the problem. However, they also noted that the essence of the automated international payments system is the speed with which it moves funds and that anything which slows down the system would make United States banks less competitive. Most commenters also pointed out that the vast majority of international payments are legitimate.

In addition, many commenters noted that some of the proposals might violate foreign privacy laws and that Treasury should be sensitive to other countries' concerns. Other commenters suggested that the proposals, if adopted, would unreasonably burden the international payments system and financial institutions in general. The comments expressed concern that regulations would be costly to implement, and they suggested that Treasury focus on other money laundering "choke points," *e.g.*, the points where cash enters the financial system, to detect criminal activity.

Treasury appreciates the willingness of financial institutions to cooperate in combating drug trafficking and money laundering. In developing the regulations proposed today and in considering any final regulations, Treasury will balance the law enforcement need for the information against the costs to financial institutions and the effect on the payments system and the free flow of legitimate funds through the funds transfer process. Treasury understands that privacy laws in other countries may prohibit financial institutions from disclosing the names of customers to United States financial institutions on a routine basis, and has taken this into account in issuing the proposed regulations.

The comments also raised questions about the use of domestic funds transfers to launder money, and suggested that the regulations cover both domestic and international funds transfers. Currently, § 103.33 of the regulations, 31 CFR 103.33, requires only records on certain international funds transfers, not information on domestic funds transfers. In response to these comments, Treasury has included in the proposed regulations provisions that cover both domestic and international

funds transfers. Records on domestic funds transfers have been included because often it is impossible for a financial institution to know whether an incoming funds transfer originated abroad or whether an outgoing funds transfer is destined ultimately for a place outside the United States.

Comments Received on Specific Proposal

#1: Require a report or record by the financial institution originating or receiving an international wire transfer of funds for a customer which includes identifying and account information about the originator, beneficiary and the person on whose behalf the payment was made or received and whether the sender or receiver is aware of any separate payment instructions regarding the payment unknown to the financial institution.

#2: Require that all international wire transfer messages contain all known third party identifying information, e.g., account numbers, addresses, and names of the originator and beneficiary of the payment.

The vast majority of the comments received by Treasury were directed at these two proposals. Generally, if commenters expressed a preference, it was for recordkeeping, not reporting. In addition to the general comments, many commenters noted that the funds transfer system was highly automated with no manual review, and that any requirement to delay a transfer in order to verify information would disrupt international payments. The commenters requested that, if Treasury were to require reporting, the report contain only "known" information, with the preference for it being filed electronically. Most commenters stated that it was easier to get information on transfers that originated in the United States, as opposed to transfers that originated from abroad, because United States financial institutions can more readily obtain information about transfers originating at their institutions. Many commenters noted that foreign financial institution privacy laws would prohibit foreign banks from providing the name of a foreign originator.

There was a split of opinion among the commenters on whether exemptions should be permitted to any reporting or recordkeeping requirements for funds transfers. Those expressing concern about exemptions were worried that the system would be modeled after the currency transaction reporting exemption system, *i.e.*, on an account-by-account basis. Those in favor of exemptions suggested a broad exception program instead, suggesting that

exceptions be permitted for categories of transactions such as transfers conducted for: corporations traded on one of the public stock exchanges; the bank's own account; a company rated by one of the securities ratings services or recognized by a credit ratings service; public utilities; government agencies; and businesses who make regular transfers commensurate with their business activity.

Many commenters suggested some sort of monetary threshold for records or reports for funds transfers, such as \$10,000. Several commenters stated that Treasury should be clearer about the terminology used, and that any regulation should use the same terminology as is used in proposed Uniform Commercial Code (UCC) Article 4A on funds transfers. There was concern over whether a transaction had to be refused or payment delayed if the required information was not available.

Finally, there also were questions concerning the ability of a financial institution to determine whether an apparently domestic funds transfer was part of an international payment. This is because where intermediary financial institutions are used in many funds transfers, the originating financial institution or beneficiary's financial institution may not be aware when a particular payment order relates to funds originating with an international funds transfer. Some commenters recommended that the same recordkeeping requirements be placed on all transfers—domestic and international. Several commenters noted that it would be administratively easier for them to keep the records on all transfers.

Treasury has decided to propose only enhanced recordkeeping requirements at this time. Reporting of international funds transfers or of categories of funds transfers is still under consideration. Treasury is considering either routine reporting or only reporting of suspicious funds transfers, based on a suspicious transfer profile developed by Treasury and supplemented by individual institutions. Treasury continues to be interested in comments on the concept of reporting and how reporting would relate to recordkeeping measures taken in response to this proposal.

Under the proposed regulations, domestic banks, depending upon their role in the funds transfer process (originator's bank, beneficiary's bank, or intermediary bank), will have to keep certain records on all funds transfers, regardless of amount. Generally, there are no exemptions from recordkeeping requirements under the Bank Secrecy Act. However, Treasury is proposing

that funds transfers between domestic banks for their own accounts will be exempt from these recordkeeping requirements in view of the lack of law enforcement utility for such records. In the future, if Treasury proposes reporting of funds transfers, Treasury will consider other appropriate exemptions.

Treasury agrees that, in many situations, it is not apparent whether the funds involved in a funds transfer are domestic or international in origin. Treasury has determined that there is law enforcement value in having records of all transfers. Therefore, Treasury is proposing that the recordkeeping regulations apply to both international and domestic transfers.

#3: Require that prior to originating international payments on a customer's behalf, either through a book entry transfers of credit or through international wire transfers of funds, financial institutions apply model "know your customer" procedures to verify the legitimate nature of the customer's business and that the transfers are commensurate with legitimate business activities.

Many commenters stated that they felt that a "know your customer" procedure made good business sense. Many also noted, however, that the nature of funds transfers was different from the nature of currency transactions and that different procedures should be applicable. Most commenters have difficulty with any requirement that they verify the nature of the customer's business and the amount of the transactions, because they would be unable to determine prior to the transfer (or even after) that the customer's business was legitimate and that the amount of the funds transfer was commensurate with the customer's legitimate business. Several commenters asked Treasury to provide guidance or prescribe what the procedures would be and to propose uniform industry standards. More than one commenter noted that the guidelines should avoid reliance on subjective factors.

Several commenters felt that it was not part of their function as a financial institution to investigate in detail the legitimate nature of a customer's business. However, others thought that know your customer procedures should be extended to all areas of a financial institution in order to protect the financial institution against money laundering, and that they would have no problem in attempting to determine whether a funds transfer was commensurate with the customer's business. Several commenters already

have know your customer procedures. Some commenters suggested reviewing the funds transfer after it is completed so as not to disturb the payment process.

After consideration of the comments, Treasury has decided not to pursue this option at the present time, but plans to address this topic in the future in connection with mandatory and comprehensive know your customer procedures for financial institutions. In the meantime, Treasury is encouraged by the many financial institutions who have voluntarily instituted know your customer policies and procedures and reminds all financial institutions to familiarize themselves with their customers' activities to become aware of any suspicious activities or deviations from their normal activities in the funds transfer and other areas. Unless a financial institution knows its customers, it will be vulnerable to money laundering and will not be able to fulfill its obligation to report possible criminal violations of law. See e.g., 12 CFR 21.12.

#4: Require special identification procedures and recordkeeping or reporting of international payments sent or received without established account relationships at financial institutions.

There was a consensus among the commenters, at least for those financial institutions who do PUPID (pay upon proper identification) funds transfers, that they are willing to put into place reasonable special identification procedures for noncustomers receiving funds transfers. Some suggested that the procedures not require more information than is currently required when filling out a Currency Transaction Report on currency transactions exceeding \$10,000.

Many banks said that they do not originate funds transfers for nondeposit accountholders or that, if they permit them, they only originate payment orders for small amounts, (e.g., \$1,000) and rarely or never receive incoming transfers for nondeposit accountholders. Of those banks which receive these transfers, most said that they ask for at least one piece of identification before releasing the funds to the beneficiary.

Information on originators and beneficiaries who do not have account relationships with banks often is lacking or cannot be retrieved making it difficult for law enforcement authorities to trace funds transfers. Thus, after consideration of the comments, Treasury has decided to propose special identification procedures for funds transfers involving originators or beneficiaries of funds transfers who are nondeposit accountholders.

#5: Require that financial institutions develop a suspicious international wire transfer profile and report suspicious payments to Treasury; the profile might include certain criteria suggested by Treasury, for example, the presence of large currency deposits prior to an outgoing transfer or the existence of an incoming transfer followed by issuance of a cashier's check

It was the overwhelming opinion of the commenters that Treasury, not the financial institutions, should develop suspicious wire transfer profiles, or that financial institution regulators and/or a group of financial institutions should develop the profile. Many commenters felt that they did not have sufficient expertise to develop profiles on their own and indicated that it is often difficult to distinguish between suspicious and legitimate transactions. Some commenters pointed out that because the nature of a funds transfer is different from the nature of currency transactions, it is more difficult to determine what is suspicious activity.

Several commenters stressed that because the funds transfer system is automated and most payment orders are not reviewed before they go out, regulations requiring review prior to transmittal could stop the payment order, and impede the international payments system. Most commenters also noted that their internal computer systems are not integrated and that, as a result, they cannot determine what account activity preceded a funds transfer, e.g., whether there had been a recent large cash deposit.

One bank commenter said that it produces a weekly suspected money laundering report and runs the information against variable parameters to identify activity that is suspicious in relationship to an account's overall activity. Another commenter said that it could use its current capability to sort funds transfer activity by customer and account officer and have the account officer identify unusual patterns of activity by certain customers. Some commenters noted that the guidelines should be objective, specific and clear so that the financial institution will not be "second-guessed" at a later date if they do not file a suspicious activity report.

After consideration of the comments, Treasury has decided not to require reporting of suspicious funds transfers at this time. However, Treasury is encouraged by the many financial institutions that have developed suspicious funds transfer profiles and encourages other financial institutions to develop their own programs to identify suspicious funds transfers and

other suspicious activity. Treasury strongly urges financial institutions to report suspicious activity, including suspicious funds transfers, to the local office of the Internal Revenue Service's Criminal Investigation Division, and in the case of suspicious international wire transfers, notify the local office of the U.S. Customs Special Agent in Charge, and where applicable, also to file the required Criminal Referral Form with the bank regulatory agency. In order to prevent the use of financial institutions by money launderers and other criminals, currency transaction reporting and recordkeeping must be coupled with the reporting of possible violations of law or regulation.

#6: Require that: (A) when an institution, typically a bank, receives a 103.25 targeting order it must obtain to the extent possible, information from other domestic banks involved in the transfer regarding the identity of the originator or beneficiary of the transfer; and (B) that those other domestic banks cooperate in providing this information on a timely basis to the targeted institution

Because the recordkeeping requirements being proposed should obviate the need for financial institutions to obtain additional information from other financial institutions in order to respond to a targeting order issued under 31 CFR 103.25, Treasury has decided not to pursue this option.

#7: Add a category for international book transfers not involving wire transfers, such as transfers of credit in the books of a foreign and a domestic institution, to the 103.25 categories of information that may be requested.

Book transfers generally are transfers of credit between affiliated financial institutions. These institutions can be foreign and domestic branches or subsidiaries of the same financial institution corporation, for example, a corporation's New York branch and its U.K. branch. Transfers between affiliates may be made without use of any wholesale wire transfer systems through private communication systems or even by telephone. Under the Bank Secrecy Act regulations, 31 CFR part 103, a foreign branch is treated as a separate financial institution.

While most financial institutions offered no objection to this proposed provision, they raised several questions about Treasury's purpose in adding a category for international book transfers not involving the use of wholesale wire transfer systems to 31 CFR 103.25. The commenters requested that Treasury be very clear about what it was referring to

and asked Treasury to define all terms. Several commenters noted that they treated book transfers the same way as they treat all other types of funds transfers, and that book transfers should be subject to the same regulations as other funds transfers. Several commenters stated that they do not have foreign branches or do not do book transfers.

Treasury has decided to specify that records relating to all types of funds transfers by banks and transmittals of funds by financial institutions other than banks may be requested in any order issued under § 103.25. The term "funds transfer" as defined in the proposal would include book transfers. The proposal also specifies that if an order issued under § 103.25 calls for information about funds transfers or funds transmittals by financial institutions other than banks, all information required to be maintained with respect to the transfer required in proposed subsections 103.33 (e) and (f) could be required to be furnished.

Proposed Amendments

Several amendments are being proposed today.

Funds Transfers through Banks

Definitions

Initially, Treasury is proposing that several additions be made to the definitions section of the regulations, § 103.11, to cover the funds transfer terminology used in the other proposed regulations. 31 CFR 103.11. In response to the comments, most of the proposed definitions are based upon proposed UCC Article 4A definitions dealing with funds transfers.

A definition of *funds transfer* has been proposed. As noted above, a funds transfer is a series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. Definitions of the various parties in a funds transfer also are being proposed. *The originator or originator of a payment order* is the person causing the initiation of a funds transfer. *The beneficiary or beneficiary of a payment order* is the person to be paid the proceeds of the funds transfer. *The originator's bank* is the first bank to send a payment order to carry out the originator's order. *The beneficiary's bank* is the bank that pays the beneficiary of the payment order. An *intermediary bank* is a financial

institution in the funds transfer process which is neither the originator's nor the beneficiary's bank.

Example #1: Ashley Martin, a Kansas bookseller, wishes to send \$5,000 to Allingham Books in London to pay for books she is selling at her store. She goes to her bank, the Bank of Main Street, and requests that \$5,000 be transferred from her account to the account of Allingham Books in London at Kensington Bank. The Bank of Main Street uses a participant bank in the New York Clearinghouse's Interbank Payments System (CHIPS), CHIPSBank, with which it has a correspondent relationship, to make the transfer to the Kensington Bank, with which CHIPSBank has a correspondent relationship. In this example, Ashley Martin is the originator of the payment order; the Bank of Main Street is the originator's bank; Allingham Books is the beneficiary of the payment order; Kensington Bank is the beneficiary's bank, and CHIPSBank is the intermediary bank. Some funds transfers may have more than one intermediary bank in the funds transfer chain, depending upon the correspondent relationships of the banks involved.

The proposed regulations will require retention of the "date" of the funds transfer. There are two relevant dates, definitions of which are proposed. The *Execution Date* is the date upon which a payment order is to be issued; normally the execution date is the date upon which the order is received by the bank originating the funds transfer. The *Payment Date* of a funds transfer is the day on which the beneficiary's bank is to pay the beneficiary. Many times, these two dates are the same.

Example #2: John James of Chicago requests his bank to send \$500 from his savings account on July 6 to his mother Mary Jones in Omaha, payable immediately. The bank receives the request for the transfer on July 6th and sends out the payment order the same day. Mary Jones' bank receives the payment order on July 6th and immediately credits her account for \$500. In this example, July 6th is both the execution date and the payment date.

A definition of "payment order" also is being proposed. A *Payment Order* is an instruction of a person to a receiving bank transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary (but does not include ACH payment orders) if: (a) The instruction does not state a condition to payment to the beneficiary other than time of payment; (b) the receiving bank is to be reimbursed by debiting an account of, or otherwise

receiving payment from, the sender; and (c) the instruction is transmitted by the originator of the payment order directly to the originator's bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

This definition includes not only traditional funds transfers through wholesale wire transfer systems, but also covers book entries, and other ways of transmitting funds by banks, for example, through a bank's internal communication system that links its foreign and domestic affiliates.

Enhanced Recordkeeping for Funds Transfers

Treasury is proposing that financial institutions be required to retain specific information concerning funds transfers except funds transfer between domestic banks for their own accounts. Under current regulations, the only information required is a record of the advice, instruction, or request for international funds transfers over \$10,000. However, the regulation does not specify what information must be contained in the record. As a result, many financial institutions have complete, comprehensive information on their funds transfers, while other financial institutions have almost none, making it very difficult for law enforcement to trace the money and for Treasury to use its targeting authority under 31 CFR 103.25 effectively. Drug and other illegal-source money is being sent through the funds transfer system domestically and internationally, in all amounts.

Treasury is proposing that the originator's bank retain the following information for each funds transfer:

- (1) The name of the originator of the payment order, and the originator's account number, if applicable;
- (2) Unless the originator is a publicly traded corporation, public utility, or government agency, the name of any person on whose behalf the funds transfer was originated, if different from the originator (1);
- (3) The amount of the funds transfer;
- (4) The execution date of the funds transfer;
- (5) The payment instructions, if any;
- (6) The identity of the beneficiary's bank; and
- (7) The name of the beneficiary of the payment order, and the account number, if applicable.

Treasury also is proposing that a bank which acts as an intermediary bank retain whatever information it receives from the preceding bank, be it the originator's bank or another intermediary bank.

Finally, Treasury is proposing that a bank retain the following information for each funds transfer for which it is the beneficiary's bank:

(1) The name of the beneficiary of a payment order (whether or not a deposit accountholder), and the account number, if applicable;

(2) Unless the beneficiary is a publicly traded corporation, public utility or government agency, the name of any person on whose behalf the funds transfer was received, if different from the beneficiary (1);

(3) The amount of the funds transfer;

(4) The payment date of the funds transfer;

(5) The payment instructions, if any;

(6) The identity of the originator's bank; and

(7) The name of the originator of the payment order, and the account number, if applicable and known.

Treasury is proposing that these records be retrievable by the name of the originator and the account number of the originator, if applicable, for an originator's bank, and by the name of the beneficiary and the account number of the beneficiary, if applicable, for a beneficiary's bank. As with other records maintained under the Bank Secrecy Act, these records may be maintained on paper, microfilm or microfiche or magnetic tape so long as they are available in readable form when requested by the Treasury Department or other law enforcement or regulatory agency. See 31 CFR 103.32.

Treasury will consider comments regarding a possible delayed effective date for certain provisions until proposed changes in the format of wire transfer messages for wholesale wire transfer systems can accommodate the additional information.

The term "on whose behalf" has the same meaning that it has with respect to currency transactions reportable under 31 CFR 103.22. For further guidance in this area, financial institutions may refer to Bank Secrecy Act Administrative Ruling 89-5, dated December 21, 1989, (55 FR 1021, January 11, 1990) which discusses "on whose behalf" in the context of currency transactions reportable under 31 CFR 103.22.

Treasury continues to be receptive to alternative suggestions for recordkeeping that would minimize costs to banks without jeopardizing the underlying purpose of these regulations, including suggestions for possible additional exemptions from these requirements.

If in the future, Treasury requires reporting of funds transfers, the information reported may also include the address of the originator, for a report

by an originator's bank, and the address of the beneficiary, for a beneficiary's bank.

Nondeposit Accountholder Transactions

Treasury is proposing special identification verification and recordkeeping procedures for a bank that acts as an originator's bank for a funds transfer for a customer who does not have a deposit account at the institution. Treasury is proposing that in that instance, prior to the initiation of the funds transfer, the bank must verify the name and address of the person requesting the funds transfer, and maintain a record, in addition to any other required information, of that person's name, address, social security number, and date of birth.

Similarly, if a bank acts as a beneficiary's bank for a customer who does not hold a deposit account at that institution, the bank must verify the name and address of the beneficiary and maintain a record, in addition to any other required information, of the beneficiary's name, address, social security number, and date of birth prior to payment of the funds.

Time Deadlines

Treasury is proposing that a domestic bank which acts as originator or originator's bank for a funds transfer have the required information prior to the initiation of the funds transfer. Because the originator's bank is located in the United States, the bank should be able to obtain the required information prior to initiating the particular payment order. The intermediary bank merely will retain whatever information is received from the originator's bank or intermediary bank preceding it in the chain of the funds transfer.

Treasury is proposing that a financial institution which acts as a beneficiary's bank for a beneficiary who is not a deposit accountholder have the required information prior to payment of the funds. A bank which acts as a beneficiary's bank with respect to a funds transfer for a deposit accountholder would be required to have the required information within 15 days after payment of the funds transfer to the beneficiary of the payment order if the information is not available at the time of payment.

In the case of a deposit accountholder, if the beneficiary's bank has been unable to secure the necessary information, including the name of the foreign originator, either from the information accompanying the payment order or by contacting the deposit accountholder, it shall nevertheless not be deemed to be in violation of the Bank

Secrecy Act if: (1) It made a reasonable effort to secure such information; and (2) it maintains a list containing the names, addresses, and account numbers of the beneficiaries of payment orders on which there is incomplete information. The names, addresses and account numbers would be made available to the Secretary upon request. This is similar to the requirement to obtain taxpayer identification numbers by banks, securities brokers and dealers, casinos, and currency dealers and exchangers. 31 CFR 103.34(a); 31 CFR 103.35(a); 31 CFR 103.36(a); 31 CFR 103.37(a). Treasury suggests that possible "reasonable efforts" would include contacting the deposit accountholder by letter or telephone and then sending a follow-up letter if there is no response to the initial communication.

Treasury stresses that it is not requiring that United States financial institutions contact foreign financial institutions for any additional information. Treasury realizes that a foreign financial institution may be precluded from providing any information because of its financial privacy laws. Thus, Treasury is requiring that United States financial institutions obtain the necessary information from its U.S. customers. Treasury recognizes that in situations where both the originator and beneficiary are outside the U.S. all of the information may not be obtainable due to the operation of foreign secrecy laws. These transactions generally are of far less interest to U.S. law enforcement authorities than transactions that begin and end in the United States.

Nonbank Transmitters of Funds

As noted above, the proposed regulations impose parallel recordkeeping requirements on financial institutions subject to the recordkeeping and reporting requirements of the Bank Secrecy Act, other than banks, which transmit or receive funds for domestically and internationally. See 31 CFR 103.11(i). These institutions may be doing business as telegraph companies or check cashers or "fronting" as other businesses, typically as travel agencies. The methods of transmitting funds by nonbank financial institutions also are diverse. The funds may be transmitted through funds transfers through banks, through private communications systems or by a telephone directive to transfer credit in a corresponding nonbank financial institution, such as a foreign exchange dealer in Latin America. However accomplished, records relating to these transmittals of funds and their receipt are of

comparable law enforcement interest to records of funds transfers through banks.

Therefore, Treasury is proposing that financial institutions, other than banks, that transmit funds for customers or receive funds from other financial institutions or foreign financial agencies for payment to any person be required to retain specific information about such transmittals or receipts of funds.

A nonbank financial institution transmitting funds would be required to maintain a copy of any application or form the person initiating the transmittal completes and to record the following information prior to transmitting funds for any person or on its own behalf:

(A) The name, address, social security number, and date of birth of the person instructing that the funds be transmitted and the account number, if applicable;

(B) The name of any person on whose behalf the funds were transmitted if different from (A);

(C) The amount of funds transmitted;

(D) The date of the funds transmission;

(E) Any payment instructions;

(F) The identity of the person or financial institution receiving the funds on behalf of the recipient; and

(G) The name and address of the recipient of the funds transmitted, and account number, if applicable.

A nonbank financial institution receiving a transmittal of funds would be required to maintain a copy of any form or receipt the person receiving the funds completes and to record the following information prior to making payment to any person:

(A) The name, address, social security number, and date of birth of the person receiving the funds and the account number, if applicable;

(B) The name of any person on whose behalf the funds are received if different from (A);

(C) The amount of funds received;

(D) The date the funds were received;

(E) Any payment instructions;

(F) The identity of the person or financial institution transmitting the funds on behalf of the person who instructed transmittal of funds; and

(G) The name and address of the person who ordered the funds transmittal, and account number, if applicable and known.

As in the case of banks dealing with funds transfers for nondeposit accountholders, a nonbank financial institution transmitting funds would be required to verify and record the identity of the person instructing the transmittal prior to transmitting funds, and a nonbank financial institution receiving funds would be required to

verify and record the identity of the person receiving payment prior to making payment.

Similar to records of funds transfers maintained by banks, nonbank financial institutions will be required to maintain these records such that they would be retrievable by Treasury or another law enforcement agency by the name of the person instructing the transmittal and by the account number of that person, if applicable, for a financial institution transmitting funds, and by the name of the recipient for financial institutions receiving funds. These records would have to be maintained on-site at the financial institution transmitting or receiving the funds and like all other records under the Bank Secrecy Act, would have to be retained for five years.

Treasury is receptive to alternative suggestions for recordkeeping that would minimize costs to non-bank financial institutions without jeopardizing the underlying purpose of these regulations.

The following are examples of the application of these recordkeeping requirements for nonbank financial institutions:

Example #3: Mary Daker, a California resident, wishes to send \$2,500 to her son Peter in Maine. She goes into the local agent of a telegraph company, tenders the funds and arranges to have payment made to her son at the office of the agent of the telegraph company in Maine where Peter Daker then picks up the funds. The agency in California communicates the payment instruction to the agency in Maine through the telegraph company's private communication network and deposits the currency to the agency's own account in California.

The telegraph company agency in California is a nonbank financial institution and its transmittal of funds would be subject to the recordkeeping requirements of proposed § 103.33(g), including the requirement that Mary Daker's identity be verified and recorded. The record would have to be maintained on-site at the California agency. The telegraph company agency in Maine receiving the instruction to make payment to Peter is a nonbank financial institution receiving a transmittal of funds. It would be subject to the recordkeeping requirement of proposed § 103.33(f), including the requirement that Peter's identity be verified and recorded. The record would have to be maintained on-site at the Maine agency. There is no funds transfer involving a bank in this example.

Example #4: Sun and Fun Travel Agency, which also transmits funds on

behalf of its customers is a financial institution for purposes of the Bank Secrecy Act regulations. Robert Smith is a customer who wishes to send \$500 to his grandmother, Maria Smith, in Peru. Robert Smith gives \$500 to Sun and Fun by a personal check. Sun and Fun contacts a foreign currency broker in Peru with which it has an established relationship. The currency broker debits an account in the name of Sun and Fun in Peru, and pays Maria Smith \$500. Sun and Fun is acting as the transmitter of funds and must record this transaction prior to initiating it under proposed § 103.33(f). Sun and Fun deposits Robert Smith's check to its account at a local bank and this transaction would be subject to the recordkeeping requirement in proposed § 103.33(f)(2). Sometime later, Sun and Fun will originate a payment to the foreign currency broker covering a number of similar transactions by arranging a funds transfer through its bank to the account of the foreign currency broker in a bank in Peru. Sun and Fun's bank, as an originator bank, would be required at that time to make a record of the transaction as required by proposed § 103.33(e).

Example #5: Casa Check Casher in New York City operates out of a storefront in an ethnic community containing many recent immigrants. Casa is a financial institution under the Bank Secrecy Act regulations. A customer gives Casa \$3,000 (in any form, eg., cash, check or money order) to send to his mother in his native country. Casa does not have the ability to arrange for a transmittal of funds directly. Instead, Casa goes to Bank A, its local bank, where it has a deposit account and arranges for its account to be debited \$3,000 and for that amount to be transferred through a funds transfer to Bank B, a bank in the native country of Casa's customer. Bank B will arrange payment to the customer's mother. In this situation, Casa would be required to keep the records required by proposed § 103.33(f)(1)(i) as a financial institution transmitting funds.

A separate record of the funds transfer originated by Casa's bank would be maintained by Bank A pursuant to proposed § 103.33(e)(1)(i). Casa would be the originator of the funds transfer. Its customer would be the person on whose behalf Casa was originating payment.

Targeting Orders

Treasury is proposing that in § 103.25, which permits Treasury to issue orders to financial institutions to require reports of certain types of transactions

with foreign financial agencies, be expanded to include in the case of a bank receiving an order, all funds transfers, including book entries, and in the case of financial institutions other than a bank, all transmittals or receipts of funds by the institution. The information that could be requested in the order would be the same information required to be maintained under proposed subsections 103.33 (f) and (g).

Example #6: Metrobank has branches in New York and London. James Smith, a customer of Metrobank in New York, wishes to make payment to Michael Blank, a customer of Metrobank in London, for some paintings. He requests Metrobank New York to debit his account \$50,000 and credit it to Michael Blank in London. Metrobank New York telephones Metrobank London to convey Mr. Smith's payment order. The bank notes in its account records that \$50,000 was moved from one of its accounts to another. Information required to be retained pursuant to proposed § 103.33(e) about this transaction could be requested in an order issued under § 103.25.

Submission of Comments

Treasury requests comments from all interested persons concerning the proposed amendments. While comments on all aspects of the regulations are welcome, Treasury is particularly interested in receiving comments on how long financial institutions will need to put new regulations into effect. Treasury also is interested in comments on the appropriate format for maintaining the required records in machine-readable form if it is determined to implement routine reporting in the future. All comments received before the closing date will be carefully considered. Oral comments must be reduced to writing and submitted to Treasury to receive consideration. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in room 5030, 1500 Pennsylvania Ave., NW, Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should

contact the Office of Financial Enforcement at (202)566-8022.

Executive Order 12291

In the Advance Notice of Proposed Rulemaking, Treasury asked commenters to provide information about the cost of implementing the various proposals including the proposal for enhanced recordkeeping. Treasury did not receive detailed comments in this regard which would lead us to conclude that this proposed rule if adopted as a final rule, would be a major rule for purposes of Executive Order 12291. Therefore, we have no basis to believe that the proposal will have an annual effect on the economy of \$100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required. However, Treasury will entertain comments on this point.

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 proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The requirements for recordkeeping will affect a number of small non-bank financial institutions, but we do not believe that the requirements will pose a substantial recordkeeping burden on those entities.

Paperwork Reduction Act

The collections of information contained in this Notice of Proposed Rulemaking 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 collections of information and the burden estimate should be directed to the Office of Financial Enforcement at the address noted above or to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

The collections of information in this regulation are authorized by 12 U.S.C. 1829b and 1951-1959 and 31 U.S.C. 5311-5326. The likely recordkeepers are banks that perform funds transfers or other financial institutions performing

transmittals of funds for themselves or other persons.

Estimated total annual reporting and/or recordkeeping burden: 7.5 million hours.

Estimated average annual burden per respondent and/or recordkeeper: 187 1/4 hours.

Estimated number of respondents and/or recordkeepers: 40,000

Estimated annual frequency of responses: Upon request.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendment

For the reasons set forth in the preamble, it is proposed to amend 31 CFR part 103 as set forth below:

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

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

Authority: Pub. L. 91-508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91-508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

2. It is proposed to amend § 103.11 by redesignating present paragraphs (c) through (h) as (e) through (j); present paragraphs (i) through (k) as (1) through (n); present paragraphs (1) and (m) as (q) and (r); present paragraphs (n) through (q) as (w) through (z); present paragraphs (r) through (u) as (aa) through (dd); and by adding new paragraphs (c), (d), (k), (o), (p), (s) (t), (u) and (v), all to read as follows:

§ 103.11 Meaning of Terms.

(c) *Beneficiary or Beneficiary of a payment order.* The beneficiary of a payment order, with respect to a funds transfer, is the person to be paid the proceeds of the funds transfer.

(d) *Beneficiary's bank.* The beneficiary's bank, with respect to a funds transfer, is the bank that pays the beneficiary of the payment order.

* * * * *

(k) *Execution Date.* In connection with a funds transfer, the execution date is the date upon which a payment order is to be issued; normally the execution date is the date upon which the order is received by the originator's bank.

(o) *Funds Transfer.* Funds transfer means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(p) *Intermediary bank.* An intermediary bank, with respect to a funds transfer, is a bank in the funds transfer chain which is neither the originator's nor the beneficiary's bank.

(s) *Originator or originator of a payment order.* The originator of a payment order, with respect to a funds transfer, is the person causing the initiation of a funds transfer.

(t) *Originator's bank.* The originator's bank, with respect to a funds transfer, is the first bank to send a payment order to carry out the originator's order.

(u) *Payment date.* The payment date of a funds transfer means the day on which the amount of the order is payable to the beneficiary.

(v) *Payment Order.* A payment order means an instruction of a person given to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary (but does not include ACH payment orders) if:

- (1) The instruction does not state a condition to payment to the beneficiary other than time of payment;
- (2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and
- (3) The instruction is transmitted by the originator directly to the originator's bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

3. It is proposed to revise paragraph (b)(2) of § 103.25 to read as follows:

§ 103.25 Report of transactions with foreign financial agencies.

(b) * * *

(2) Funds transfers or transmittals of funds received by respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information required to be maintained with respect to such transaction by subsections § 103.33(e) or (f) of this subpart.

4. It is proposed to amend § 103.33 by adding new paragraphs (e) and (f) to read as follows:

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

(e)(1) A bank shall retain either the original or a microfilm or other copy or reproduction of—

(i) The following information for each funds transfer for which it is the originator's bank:

(A) The name of the originator of the payment order, and the account number, if applicable;

(B) Unless the originator is a publicly traded corporation, public utility or government agency, the name of any person on whose behalf the funds transfer was originated, if different from (A);

(C) The amount of the funds transfer;

(D) The execution date of the funds transfer;

(E) The payment instructions, if any;

(F) The identity of the beneficiary's bank; and

(G) The name of the beneficiary of the payment order, and the account number, if applicable.

(ii) When acting as an intermediary bank for a funds transfer, any information received by the institution by the originator's bank or another intermediary bank;

(iii) The following information for each funds transfer for which it is the beneficiary's bank:

(A) The name of the beneficiary of the payment order, and the account number, if applicable;

(B) Unless the beneficiary is a publicly traded corporation, public utility or government agency, the name of any person on whose behalf the funds transfer was received, if different from (A);

(C) The amount of the funds transfer;

(D) The payment date of the funds transfer;

(E) The payment instructions, if any;

(F) The identity of the originator's bank; and

(G) The name of the originator of the payment order, and the account number, if applicable and known by the beneficiary.

(2)(i)(A) A bank which acts as the originator's bank with respect to a funds transfer for a deposit

accountholder must obtain the information required in paragraph (f)(1)(i) prior to the initiation of the first payment order.

(B) Prior to acting as an originator's bank with respect to a funds transfer for a nondeposit accountholder, the financial institution must verify the originator's name and address by examination of a document that contains the name and address of the originator and record that information and the type and number of the identification documentation reviewed. The bank shall maintain a record, in addition to the information required in paragraph (e)(1)(i), of the person's name, address, social security number, and date of birth.

(ii)(A) A bank which acts as a beneficiary's bank with respect to a funds transfer for a deposit accountholder must obtain the information required in paragraph (e)(1)(iii) within 15 days after payment of the funds transfer to the beneficiary. In the event that a financial institution has been unable to secure the required information, it shall nevertheless not be deemed to be in violation of this section if

(1) it has made a reasonable effort to secure such information, and

(2) it maintains a list containing the names, addresses, and account numbers of those persons originating funds transfers on which there is incomplete information.

The names, addresses and account numbers shall be made available to the Secretary upon request.

(B) Prior to acting as a beneficiary's bank with respect to a funds transfer for a nondeposit accountholder, the bank must verify the name and address of the beneficiary of the funds transfer by examination of a document that contains the name and address of the beneficiary and record that information and the type and number of the identification document reviewed. In addition, the bank also must maintain a record, in addition to the information required in paragraph (e)(1)(iii), of the person's name, address, social security number and date of birth.

(3) The information required in paragraph (e)(1)(i) to be maintained by the originator's bank shall be retrievable by the name of the originator of the funds transfer and by the originator's account number, if applicable. The information required in paragraph (e)(1)(iii) to be maintained by the beneficiary's bank shall be retrievable by the name of the beneficiary of the funds transfer and by the account number of the beneficiary, if applicable.

(4) Funds transfers between domestic banks for their own accounts are not subject to the requirements of this paragraph (e).

(f)(1)(i) A financial institution (other than a bank) that transmits funds for a person or on its own behalf shall retain the original or a microfilm or other copy or reproduction of the following information or record with respect to each transmittal of funds:

(A) The name, address, social security number, and date of birth of the customer instructing that the funds be transmitted and the account number, if applicable;

(B) The name of any person on whose behalf the funds were transmitted if different from (A);

(C) The amount of funds transmitted;

(D) The date of the funds transmittal;

(E) Any payment instructions;

(F) The identity of the person or financial institution receiving the funds on behalf of the recipient;

(G) The name and address of the recipient of the funds transmitted, and account number, if applicable, and

(H) Any application or form completed by the person instructing the transmittal relating to the transmittal.

(ii) Prior to transmitting funds, the financial institution must verify the name and address of the person instructing the transmittal by examination of a document that contains the name and address of the person and record that information and the type and number of the identification document reviewed.

(2)(i) A financial institution (other than a bank) that receives funds for any person or on its own behalf, shall retain the original or a microfilm or other copy or reproduction of the following information with respect to each transmittal of funds it receives:

(A) The name, address, social security number, and date of birth of the person receiving the funds and the account number, if applicable;

(B) The name of any person on whose behalf the funds were received if different from (A);

(C) The amount of funds received;

(D) The date the funds were received;

(E) Any payment instructions;

(F) The identity of the person or financial institution transmitting the funds on behalf of the person who instructed transmittal of funds;

(G) The name and address of the person who ordered the funds transmittal, and account number, if applicable and known; and

(H) Any receipt or form completed by the recipient relating to the receipt of funds.

(ii) Prior to disbursing funds, the financial institution must verify the name and address of the person receiving the funds transmitted by examination of a document that contains the name and address of the recipient and record that information.

(3) The information required in paragraph (f)(1)(i) by the financial institution transmitting funds shall be retrievable by the name of the customer instructing the funds to be transmitted and by the customer's account number, if applicable, and shall be maintained at the location of the branch, agency or office of the financial institution making the transmittal. The information required in paragraph (f)(2)(i) by the financial institution receiving a transmission of funds shall be retrievable by name of the funds recipient of the funds transmitted and shall be maintained at the location of the branch, agency or office of the financial institution receiving the transmittal.

Dated: October 9, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

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