



UNITED STATES

FINANCIAL SECTOR ASSESSMENT PROGRAM

July 2015

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (AML/CFT)—TECHNICAL NOTE

This Technical Note on Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) on the United States was prepared by a staff team of the International Monetary Fund. It is based on the information available at the time it was completed in June 2015.

Copies of this report are available to the public from

International Monetary Fund • Publication Services
PO Box 92780 • Washington, D.C. 20090

Telephone: (202) 623-7430 • Fax: (202) 623-7201

E-mail: publications@imf.org Web: <http://www.imf.org>

Price: \$18.00 per printed copy

International Monetary Fund
Washington, D.C.



UNITED STATES

FINANCIAL SECTOR ASSESSMENT PROGRAM

June 2015

TECHNICAL NOTE

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (AML/CFT)

Prepared By
Legal Department

This Technical Note was prepared in the context of an IMF Financial Sector Assessment Program (FSAP) mission to the United States of America, led by Aditya Narain and overseen by the Monetary and Capital Markets Department, IMF. Further information on the FSAP can be found at <http://www.imf.org/external/np/fsap/fssa.aspx>

CONTENTS

GLOSSARY	3
EXECUTIVE SUMMARY	4
INTRODUCTION	6
GENERAL OVERVIEW OF THE U.S. AML/CFT FRAMEWORK	7
TRANSPARENCY AND BENEFICIAL OWNERSHIP OF U.S. LEGAL PERSONS AND ARRANGEMENTS	8
A. Background and Risk	8
B. Main Findings of the 2006 MER	10
C. Developments since the 2006 MER	10
D. Collecting, accessing, and sharing information about beneficial ownership	12
E. Recommendations	17
TABLE	
1. Main Recommendations for AML/CFT	5

Glossary

AML	Anti-money laundering
BO	Beneficial ownership
CDD	Customer due diligence
CFT	Combating the financing of terrorism
DNFBP	Designated non-financial business and profession
EIN	Employer Identification Number
FATF	Financial Action Task Force
FI	Financial institution
FinCEN	Financial Crimes Enforcement Network
FSAP	Financial Sector Assessment Program
FT	Financing of terrorism
IRS	Internal Revenue Service
LEA	Law enforcement authority
MER	Mutual Evaluation Report
ML	Money laundering
NRPM	Notice of Proposed Rulemaking
SAR	Suspicious activity report
TCSP	Trust and company service provider
TN	Technical note
U.S.	United States

EXECUTIVE SUMMARY¹

This note sets out the findings and recommendations made in the Financial Sector Assessment Program (FSAP) for the United States in the areas of anti-money laundering and combating the financing of terrorism (AML/CFT). It summarizes the findings of a targeted review of measures to prevent U.S. legal persons and arrangements from being misused for money laundering (ML)/financing of terrorism (FT). This discussion is not, in any way, an evaluation or assessment of the U.S. AML/CFT system. The United States will undergo a complete mutual evaluation by the Financial Action Task Force (FATF) beginning June 1, 2015, the results of which will be made public in 2016.

The last FATF assessment in 2006 found that the United States had implemented an AML/CFT system that was broadly in line with the international standard, although a significant shortcoming was identified. The United States had significantly strengthened its AML/CFT regime since the previous mutual evaluation, including through enhanced legislation. However, there was a notable shortcoming with respect to the Recommendation addressing customer due diligence (CDD) which is one of the FATF's core Recommendations. There were also other deficiencies regarding the availability of ownership information about corporations and trusts, and the requirements applicable to certain designated non-financial businesses and professions (DNFBPs).

The U.S. AML/CFT legal and institutional framework has yet to address deficiencies identified in the most recent FATF mutual evaluation report (MER) regarding ownership information for U.S. corporations and trusts; in particular more rapid progress is needed to enhance transparency of legal persons to bolster financial system integrity. Trusts have a different legal and institutional framework. Draft regulations have been produced to strengthen financial institutions' (FIs) obligations to identify and verify the identity of beneficial owners and policy intentions announced to improve the authorities' access to information on the beneficial ownership (BO) and control of U.S. corporations. These measures—to address deficiencies identified in the last FATF MER of June 2006—are progressing slowly. However, in 2010 U.S. tax authorities began requiring information that includes some BO information from legal entities and trusts applying for an Employer Identification Number (EIN), which is required when they have income, employees, or are otherwise required to file any documents with the Internal Revenue Service (IRS) or open an account with an FI. Nonetheless, deficiencies remain, and even when completed, the intended changes may not completely address all of the deficiencies cited in the last FATF mutual evaluation report.

The approach taken by law enforcement agencies (LEAs) to access BO information—relying largely on a wide range of investigative powers and techniques— while often successful cannot always ensure timely access to current BO information of all U.S. corporations. The

¹ This note was prepared by Ke Chen, Stephen Dawe, and Gianluca Esposito (all IMF's Legal Department).

inability to access accurate BO information directly from states, FIs or agents serving corporations or trusts may curtail how effective the authorities can be in pursuing criminally persons who misuse U.S. corporations to launder proceeds generated domestically as well as abroad or to trace and recover their illicit assets. This includes laundering associated with taxes evaded in the United States² and abroad, by U.S. citizens and foreigners respectively, and to cooperate effectively with their foreign counterparts in this regard.

Table 1. Main Recommendations for AML/CFT

Recommendations	Priority
<p>Expediently take steps to ensure that beneficial ownership information of U.S. corporations and trusts can be accessed by the authorities in a timely manner, in particular by:</p> <ul style="list-style-type: none"> <li data-bbox="212 779 1333 894">i. requiring that such information is collected and maintained by either registries of corporations and trusts, agents serving corporations and trusts, or corporations and trusts, and is accessible by competent authorities in a timely manner; and <li data-bbox="212 926 1333 1073">ii. requiring all FIs and DNFBPs, in particular trust and company service providers (TCSPs), including lawyers and accountants providing such services, to identify the beneficial owners of corporations and trusts and take reasonable measures to verify those identities. 	<p>High</p> <p>High</p>
<p>Make serious tax crimes predicate crimes to ML.</p>	<p>Medium</p>

² The amount laundered from taxes evaded in the United States may be substantial. Serious tax crimes are not predicate crimes to ML. The authorities estimated the U.S. net tax gap to be around \$450 billion in 2006, excluding international tax evasion, and tax crimes for state taxes.

INTRODUCTION

1. **This Technical Note (TN) provides a targeted review of U.S. Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) system in the context of the Financial Sector Assessment Program (FSAP).**³ It builds upon a previous TN that accompanied the U.S. 2010 FSAP.⁴ This review is not, in any way, an assessment or evaluation of the U.S. AML/CFT system. A comprehensive assessment against the current FATF Recommendations will be available in 2016 (i.e. after the completion of this FSAP) when the FATF is expected to conclude its mutual evaluation of the U.S. AML/CFT system.
2. **As discussed with the authorities prior to the beginning of this exercise, staff's review focused mainly on the United States' progress in enhancing the transparency of and access to beneficial ownership (BO) information of U.S. companies and trusts,** at both the federal and state levels, to prevent their potential misuse for ML/FT purposes both by U.S. and foreign persons. This represents a vulnerability that was identified in the 2006 mutual evaluation report (MER) of the U.S. system⁵ that has potential ramifications for the effectiveness of the U.S. AML/CFT regime as well as potential spillovers for other jurisdictions.
3. **Staff's analysis was based on a range of material.** Staff reviewed available information (including information submitted by the United States to the FATF on progress made since 2006, and to the IMF during the 2010 U.S. FSAP), answers provided by the authorities to questions submitted ahead of the FSAP, and held brief discussions during a mission undertaken in February and March, 2015.⁶

³ Under FSAP policy, every FSAP should incorporate timely and accurate input on AML/CFT issues. Where possible, this input should be based on a comprehensive AML/CFT assessment conducted against the prevailing standard. In instances where a comprehensive assessment against the prevailing standard is not available at the time of the FSAP, (as is the case with the United States) staff may derive key findings on the basis of other sources of information, including already available information or information obtained in the context of the FSAP. See *the Acting Chair's Summing Up—Review of the Fund's Strategy on Anti-Money Laundering and Combating the Financing of Terrorism—* Executive Board Meeting 14/22, March 12, 2014 (<http://www.imf.org/external/np/sec/pr/2014/pr14167.htm>).

⁴ United States: Technical Note on Anti-Money Laundering/Combating the Financing of Terrorism, IMF Country Report No. 10/253, July 2010. Available at: <http://www.imf.org/external/pubs/ft/scr/2010/cr10253.pdf>.

⁵ The United States' AML/CFT system is currently undergoing a 4th round mutual evaluation. The previous MER was adopted and published in 2006—see <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf>. The assessment was conducted jointly by the FATF and the Asia Pacific Group on Money Laundering against the 2003 FATF 40+9 Recommendations and on the basis of the corresponding assessment methodology. The United States is expected to undergo a comprehensive assessment against the FATF's revised standard and methodology beginning June 1, 2015. An onsite mission is planned for early 2016, with plenary consideration of the draft MER scheduled for October 2016.

⁶ Staff conducted one meeting comprising representatives of the U.S. Treasury (Internal Revenue Service (IRS)—Criminal Investigation; Terrorism, and Financial Intelligence; International Affairs); the U.S. Department of Justice (Asset Forfeiture and ML Section; National Security Division; Federal Bureau of Investigation; Drug Enforcement Administration), and the Department of Homeland Security (U.S. Secret Service); and a teleconference with

(continued)

4. **During the review, staff also discussed some aspects of the U.S. efforts to identify, understand, assess and mitigate ML/FT risks**, but the discussions were inconclusive and did not generate findings of a nature to be included in the TN.

5. **The TN is structured as follows:** It first provides a general overview of the U.S. AML/CFT framework. It then sets out staff's analysis of the situation concerning transparency and beneficial ownership of U.S. legal persons and arrangements, including key findings and recommendations.

GENERAL OVERVIEW OF THE U.S. AML/CFT

FRAMEWORK

6. **The United States has a mature legal and institutional AML/CFT framework, having first criminalized money laundering in 1986.** The framework covers most requirements of the FATF recommendations. There are many agencies involved in combating ML and FT at both federal and state levels encompassing regulatory, law enforcement, prosecutorial, and other roles. The United States is a founding member of the FATF, and has undergone three assessments against the FATF Recommendations.

7. **The FATF assessment in 2006 found that the United States had implemented an AML/CFT system that was broadly in line with the international standard.** It had significantly strengthened its AML/CFT regime since the previous mutual evaluation (June 1997), including through enhanced legislation, subjecting most deposit-taking institutions to the full range of AML/CFT requirements, aggressive law enforcement action, and good cooperation domestically and internationally.

8. **However, shortcomings were identified, notably in relation to some specific requirements for undertaking customer due diligence (CDD), the availability of corporate ownership information, and the requirements applicable to certain designated non-financial businesses and professions (DNFBPs).**⁷ In relation to CDD, the evaluators determined that not all requirements were imposed on FIs using instruments that complied technically with the FATF standard and also concluded that there were no requirements for FIs to look beyond a customer to establish the identity of the beneficial owners in all cases.⁸ The evaluators found that the United States' compliance with the two recommendations dealing with the transparency of legal persons

representatives of: U.S. Treasury and IRS (Policy & Support Unit, International Operations Unit and Financial Crimes Unit).

⁷ DNFBPs, under the FATF standard, are the following businesses and professions in relation to certain transactions: casinos, real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries, other independent legal professionals, accountants, and trust and company service providers.

⁸ Beneficial owners refer to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted.

and arrangements was very weak and rated both as non-compliant. In relation to DNFBPs, the United States was found to be non-compliant with the FATF recommendations relating to CDD, recordkeeping, suspicious transaction reporting, and internal controls and partially compliant with the Recommendation on regulation and supervision.

9. **Fund staff, in a TN prepared in the context of the 2010 U.S. FSAP, reported some strengthening of the regime, but also a lack of progress in addressing key deficiencies.**⁹ The 2010 TN reported on some enhancements to legislation and the continuation of aggressive law enforcement action. It also reported that identified deficiencies relating to CDD, coverage of DNFBPs, and the availability of BO information for legal persons and arrangements remained.

10. **FATF also determined that the United States did not substantially address the identified shortcomings since the 2006 mutual evaluation.** Under FATF procedures for its third round of mutual evaluations countries were required to report back to the FATF on steps taken to address deficiencies noted in their MERs with respect to the Recommendations that were rated as partially compliant or non-compliant. In the case of the United States, these were Recommendations on CDD for FIs, CDD and recordkeeping for DNFBPs, suspicious transaction reporting and internal controls for DNFBPs, regulation and supervision of DNFBPs, transparency of legal persons, and transparency of legal arrangements. Following the 2006 mutual evaluation, the FATF required the United States to report on progress addressing its deficiencies. The third round follow-up process was postponed pending the outcome of the U.S. fourth round mutual evaluation, which began on June 1.

TRANSPARENCY AND BENEFICIAL OWNERSHIP OF U.S. LEGAL PERSONS AND ARRANGEMENTS

11. **This section reports on the extent to which the authorities are preventing the abuse of U.S. corporations and trusts for ML/FT.** It begins by describing the types of corporations and trusts existing in the United States and their ML/FT risk profiles. It then describes the main findings of the 2006 MER relating to corporations and trusts, progress since then to address identified deficiencies, and then follows with a fuller discussion about the current situation regarding the collection of and access to BO information about U.S. corporations and trusts and sharing that information with foreign authorities. It concludes with some recommendations.

A. Background and Risk

12. **Broadly speaking, there are three main types of legal persons and arrangements in the United States: corporations (including limited liabilities companies),¹⁰ partnerships,¹¹ and**

⁹ United States: Technical Note on Anti-Money Laundering/Combating the Financing of Terrorism, IMF Country Report No. 10/253, July 2010. Available at: <http://www.imf.org/external/pubs/ft/scr/2010/cr10253.pdf>.

¹⁰ Limited liability companies are a hybrid of a corporation and a partnership designed to provide its owners (called "members") with the limited liability enjoyed by corporate stockholders and the greater economic flexibility ordinarily
(continued)

trusts.¹² More than 30 million legal persons and arrangements exist, but the precise figure is unknown. They are also able to be owned or controlled by non-residents, but the extent of such ownership is also unknown. The following discussions on corporations focus on those that are not publicly traded.¹³

13. It has been long recognized that U.S. corporations may be misused for ML and related predicate crimes, both by U.S. and foreign persons. The 2006 MER noted that a threat assessment identified the formation of shell companies within certain states as a serious cause for concern,¹⁴ and there is general agreement among LEAs that, while the vast majority of corporations pursue legal activities, others are being misused for ML (including laundering of proceeds from foreign offenses) and related predicate crimes.¹⁵ As identified by the authorities, corporations may be used as a front to open bank accounts without revealing the identity of the individuals who own or control the account, and corporate vehicles are a common method used to place, layer, and integrate illicit proceeds in the financial system.¹⁶ The authorities indicated that they reviewed ML-related indictments from 2006 to 2012 and found many cases involving the use of corporations.

14. In contrast, trusts are generally considered by most authorities to pose low ML/FT risks. In the United States, a trust is a legal arrangement created between two private persons or a private person and a trust company under state law. Trust companies are authorized to act in a fiduciary (i.e., trustee) capacity and are subject to the Bank Secrecy Act.¹⁷ However, lawyers and accountants who assist with setting up trusts are unregulated for AML/CFT. The LEAs who met with the mission are of the view that trusts are not particularly attractive vehicles to those wishing to hide their activities, particularly compared to corporations, because of tax reporting obligations. However,

associated with a partnership arrangement. For the purpose of this TN, references to “corporations” should be read to include limited liability companies and as equivalent to “companies” in the FATF standard.

¹¹ A general partnership is a relationship between two or more persons who join to carry on a trade or business. Each person contributes money, property, labor, or skill, and expects to share in the profits and losses of the business. There are also limited partnerships, limited liability partnerships, and limited liability limited partnerships. This TN does not discuss any of these types of partnerships.

¹² A trust is essentially a contractual agreement typically between two private persons or between a private person and a trust company.

¹³ See paragraphs 1,000 and 1,001 of the 2006 MER. The United States imposes reporting requirements on beneficial ownership at the federal level for companies (both domestic and foreign) that offer securities to the public, or whose securities are listed on a U.S. stock exchange. However, these account for a rather small portion of all active legal entities registered in the United States.

¹⁴ See paragraph 889 of the 2006 MER.

¹⁵ See for example, commentary in relation to “*Customer Due Diligence Requirements for Financial Institutions, Notice of Proposed Rule Making*”. Federal Register 79 (August 4, 2014), 45153.

¹⁶ For instance, the lack of transparency in the formation and operation of shell companies may be a desired characteristic for certain legitimate business activity, but it is also a vulnerability that allows these companies to disguise their ownership and purpose (see FIN-2006-G014).

¹⁷ See paragraphs 52 and 1,030–1,031 of the 2006 MER.

some authorities believe that the ML/FT risks posed by trusts are not necessarily lower.¹⁸ The mission was unable to access more information about the ML/FT risks posed by trusts governed by U.S. laws.

B. Main Findings of the 2006 MER

15. **The 2006 MER found that FIs were not required to identify beneficial owners, including in relation to corporations and trusts, in accordance with FATF CDD requirements except in limited specific circumstances** (i.e. correspondent banking and private banking for non-U.S. clients).

16. **The 2006 MER rated the United States noncompliant with the FATF Recommendation concerning transparency and BO of corporations.** The evaluators noted that, while investigative powers are generally sound and widely used, there were no measures in place to ensure that there is adequate, accurate, and timely information on the BO of corporations that can be obtained or accessed in a timely fashion by competent authorities. This finding was subsequently underscored by a number of Senate testimonies that consistently pointed to the lack of transparency in the corporate formation process as inhibiting law enforcement efforts.¹⁹

17. **The United States was also rated as noncompliant with the FATF Recommendation concerning transparency and BO of legal arrangements in the 2006 MER.** The evaluators noted that, while investigative powers were generally sound and widely used, there was minimal information on BO of trusts that can be obtained or accessed by the competent authorities in a timely fashion.

C. Developments since the 2006 MER

18. **The United States has made efforts aimed at strengthening the legal and regulatory frameworks with a view to enhancing transparency of corporations since the 2006 MER, but in substance, there has been no real progress.** These efforts have included:

- In 2010, the IRS revised form SS-4 which is used to request an Employer Identification Number (EIN), including by corporations and trusts. The revised SS-4 now requires the applicant to provide the name of a “responsible party.” This is the party that controls, manages, or directs the entity and the disposition of its funds and assets. All EIN applications must disclose the name and the Taxpayer Identification Number of the responsible party.

¹⁸ See “*Customer Due Diligence Requirements for Financial Institutions, Notice of Proposed Rule Making*”. Federal Register 79 (August 4, 2014), 45160.

¹⁹ For example, U.S. Immigration and Customs Enforcement officials testified before the Senate Committee (June 2009) that the lack of information available on the true ownership and control of shell companies adversely affects the effectiveness of international cooperation because it “...limits our abilities to work jointly with our international law enforcement partners and can inhibit our ability to take quick action where it may be required.”

- Subsequently, the White House included in its 2015 and 2016 budget proposals an initiative, which, according to the authorities, would allow LEAs access to the SS-4 information in certain circumstances and impose AML/CFT obligations on company service providers.²⁰ However, the initiative has its limitations, including that the IRS would only be able to share information to help with domestic and not foreign-based ML/FT investigations, and the proposal does not seek to make BO information available to FIs or DNFBPs, so does not assist them with their efforts to verify BO of corporate customers and commercial trusts.
- In March 2010, a multi-agency guidance (*Guidance on Obtaining and Retaining Beneficial Ownership Information*) was issued that seeks to clarify and consolidate “existing regulatory expectations” for obtaining BO information for “certain accounts and customer relationships”.²¹
- Developing regulations to strengthen the CDD requirements for FIs, including in relation to collection of BO information. This eventually led to a Notice of Proposed Rule Making (NPRM), titled “Customer Due Diligence Requirements for Financial Institutions”²², being issued on August 4, 2014 for public comment. A preliminary analysis of the NPRM conducted by the FATF Secretariat indicates that FATF does not consider the proposed rules, as drafted, are fully in line with its standard.²³ In addition, staff notes that the form entitled “certification of beneficial owners” introduced as part of the NPRM appears not to fully capture the control component of the proposed definition for beneficial owners.²⁴

19. The most recent efforts, including the NPRM and the White House budget announcements, are not likely to be enacted in the foreseeable future. The rules proposed in

²⁰ As indicated by the authorities, the initiatives would require all corporations formed in the U.S. to obtain an EIN, and allow the IRS to share the ownership information from the EIN process with other LEAs without a court order to combat ML, FT, and other financial crimes. In addition, the proposal would authorize the U.S. Treasury to impose AML/CFT obligations on persons in the business of forming corporations. And while this would apply to company formation services offered by lawyers and accountants, it would not extend AML/CFT obligations to other services offered by them as required by the FATF Recommendations. It would establish standards for states to improve their regulation and oversight of the incorporation process, including to standardize the collection of “basic” ownership information (defined below).

²¹ Although this Guidance is likely helpful, it, as indicated in its text, does not “alter or supersede previously issued regulations, rulings, or guidance related to Customer Identification Program requirements.”

²² 79 F.R. 45151 (Aug. 4, 2014). (<http://www.gpo.gov/fdsys/pkg/FR-2012-05-10/pdf/2012-11227.pdf>).

²³ The Secretariat noted that the NPRM proposed rules to clarify and strengthen CDD requirements for banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities, including to identify and collect BO information on owners and managers of legal entity customers, subject to certain exemptions. However, insurance companies or brokers, money or value transfer services, foreign exchange bureaus, investment advisers and commodity trading advisers, and DNFBPs, including TCSPs, are not covered by the proposed requirements. In addition, staff notes that the proposed obligation to for FIs to verify the identity of beneficial owners places a lot of reliance on customers’ own certification.

²⁴ For control it focuses on those who manage the corporation and does not require the names of those who control the corporation through other means unless such control flows from owning 25 percent or more of the corporation’s equity.

the NPRM have not been finalized, and it is unclear when and in what form they might take effect. The comment period for the NPRM closed on October 3, 2014. Once analysis of the comments received is complete, the authorities will determine how best to address the issues raised in the comments and the appropriate next steps in the rulemaking process. Significant changes to the NPRM, if necessary, could require an additional period to allow for further public comments. There is no estimate for when the budget announcements will be turned into concrete legislative proposals.

D. Collecting, accessing, and sharing information about beneficial ownership

Information available about ownership of U.S. corporations and trusts

20. **The formation, operation, and dissolution of U.S. corporations are governed by state law, and some basic information²⁵ is collected and maintained by corporation registries at the state level.** Forming a corporation in the United States is usually a simple process; the mechanics vary from state to state, although they are usually quite similar. Every state requires the filing of a corporate governance document (called the "articles of incorporation," "certificate of incorporation," or "charter") with a state official (usually the Secretary of State). In many states, filed documents are not required to contain all the basic information (such as legal ownership) required by the FATF,²⁶ especially in states that have a strategy of promoting corporation formation by non-residents. These states also tend to require less information (including, in some cases, not to share corporate income tax information with the IRS), charge only minimal fees, and heavily involve incorporation service providers (agents) to assist the incorporating process, in some cases acting as nominee shareholders.²⁷ The Office of the Secretary of State reviews each filing to ensure that it meets the state's statutory requirements; however, the information contained in the filing is generally not verified. All information collected during the process is maintained at the state corporation registries

²⁵ In terms of FATF Recommendation 24, basic information includes: (i) company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (e.g. memorandum & articles of association), a list of directors; and (ii) a register of its shareholders or members, containing the names of the shareholders and members and number of shares held by each shareholder and categories of shares (including the nature of the associated voting rights).

²⁶ Fourteen states impose no requirement to report the identities of either shareholders or managers: (Arkansas, Mississippi, Colorado, Missouri, Delaware, New York, Indiana, Ohio, Iowa, Oklahoma, Maryland, Pennsylvania, Michigan, and Virginia); eight states and the District of Columbia require a limited liability company to report the identities of managers only: (Massachusetts, Tennessee, North Carolina, Vermont, Rhode Island, Wisconsin, South Carolina, the District of Columbia, and South Dakota); twenty-four states require a limited liability company to report the identities of shareholders, but only when the limited liability company lacks managers: (California, Nebraska, Connecticut, Nevada, Florida, New Hampshire, Georgia, New Jersey, Hawaii, New Mexico, Idaho, North Dakota, Illinois, Oregon, Kentucky, Texas, Louisiana, Utah, Maine, Washington, Minnesota, West Virginia, Montana, and Wyoming). Only four states require a limited liability company to always report the identities of shareholders: (Alabama, Arizona, Alaska, and Kansas). On the other hand, the authorities indicated that in periodic reports 45 states require corporations to collect the names and addresses of officers and/or directors, and 32 states require limited liability corporations to collect the names and addresses of members or managers.

²⁷ See case studies on pages 231–235 of the 2006 MER and Chapter 7 of the 2005 U.S. ML Threat Assessment.

and is mostly publicly available. Trusts are not required to be registered except for filing certain information with the IRS (discussed below).

21. States corporation registries and incorporation agents are not currently collecting BO information, but some of this information may be collected by the IRS in certain circumstances.²⁸ When U.S. corporations and trusts apply to the IRS to receive a tax identification number, known as an EIN, some BO information must be submitted in IRS form SS-4 under the concept of “responsible party.”²⁹ The definition of “responsible party” may not be consistent with the definition of beneficial owner as defined by the FATF in all cases.³⁰ Moreover, an EIN is not required for corporations that neither maintain an account with a FI nor meet any of several other criteria.³¹ Staff notes that it is common for corporations to be established to hold assets (e.g., real estate), and may not require the use of an account at a FI or the employment of personnel or the filing other tax documents and, therefore, may have no requirement under U.S. law to apply for an EIN. Similarly, a U.S. corporation being used to launder foreign proceeds abroad could do so without an EIN except in circumstances where it had interactions with the United States (e.g., it has a FI account in, does business in, or repatriates profits to the United States). The authorities were unable to indicate the total number of U.S. corporations or what proportion has an EIN.³² Trusts, except grantor trusts, are generally required to apply for an EIN and file annual tax returns, whereas for grantor trusts,³³ the trusts’ tax return information is reported as part of the grantor’s own income tax return.³⁴

22. FIs are still only obliged to collect BO information of corporations and trusts in limited cases. This has not fundamentally changed since the 2006 MER because the rules proposed in NPRM have not been enacted. However, in practice, according to the authorities, many FIs do collect

²⁸ This means information on the beneficial owners as defined by the FATF. See footnote 12 above.

²⁹ See IRS form SS-4, question 7A, “name of responsible party” at: <http://www.irs.gov/pub/irs-pdf/fss4.pdf>. For all other entities except the publicly traded companies, “responsible party” is the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. The ability to fund the entity or the entitlement to the property of the entity alone, however, without any corresponding authority to control, manage, or direct the entity (such as in the case of a minor child beneficiary), does not cause the individual to be a responsible party.

³⁰ See footnote 9 above. In particular, the definition focuses on control and does not cover ownership.

³¹ EIN is mandatory for an entity if:

- (i) it has employees; or
- (ii) it has a qualified retirement plan; or
- (iii) it files returns for employment taxes, excise taxes or income taxes; or
- (iv) it opens an account with a bank, securities, or futures firm.

³² In each of the last two fiscal years approximately 4.5 million corporations and trusts were issued with an EIN.

³³ These are trusts set up by a living individual or an organization of which the grantor or some other person is treated as the owner of the trust, so that the income of the trust is taxable income of the owner.

³⁴ See paragraph 1035 of the 2006 MER.

such information in certain circumstances based on regulatory guidance. Depository institutions are required to have enhanced due diligence procedures when opening accounts for customers they determine pose a higher risk and among the procedures suggested in such circumstances is collecting beneficial ownership information, but this is not a requirement.³⁵ Domestic business entities (which include corporations and trusts) are identified as an example of customers that may pose specific risks—with shell companies being identified as presenting heightened risks.³⁶ Thus, the mission notes that the collection of such BO information according to the guidance will depend on whether a corporation or a trust is considered higher risk, rather than in all cases as required by the FATF standard. Regarding trusts, the authorities stated that FIs, in addition to identifying and verifying the identity of the trust³⁷, generally also identify and verify the identity of the trustee, who would necessarily have to open the account for the trust despite the absence of a mandatory requirement. In addition, guidance for banks provides that “in certain circumstances involving revocable trusts, the bank may need to gather information about the settlor, grantor, trustee, or other persons with the authority to direct the trustee, and who thus have authority or control over the account, in order to establish the true identity of the customer.”³⁸

Access to BO information by LEAs and other authorities

23. **Suspicious Activity Reports (SARs) were mentioned by the LEAs as an occasional source of BO information.** In the absence of obligations for FIs to identify beneficial owners, the BO information contained in SARs filed with FinCEN may be limited.

24. **IRS investigators have direct access to BO information held in the tax registration system and other LEAs can also gain access to this information.** According to the authorities, the IRS’s Criminal Investigation Division has direct access to information in form SS-4 when investigating potential criminal violations of the Internal Revenue Code. However, all LEAs, including the IRS, need a court order to access this IRS information when investigating ML or any non-tax violation. In discussions, the authorities indicated that obtaining such court orders was relatively straightforward. The information available on form SS-4 may assist with identifying beneficial owners for all applicants for an EIN after January 2010, and information provided prior to January 2010 may not relate to BO.

25. **Non-IRS LEAs indicated that they supplement the information available to them with a full array of investigative techniques to locate the ultimate beneficial owner of corporations and trusts, which they consider to be an effective approach.** The use of these techniques is

³⁵ Federal Financial Institutions Examination Manual, 2014, pages 57–58.

³⁶ Ibid, pages 20, 21, and 314.

³⁷ The obligation at 31 USC § 5318(l) to identify and verify account holders but not beneficial owners is implemented in the following regulations: depository institutions (31 CFR § 1020.220), securities broker-dealers (31 CFR § 1023.220), mutual funds (31 CFR § 1024.220), futures commission merchants and introducing brokers in commodities (31 CFR § 1026.220), and dealers in foreign exchange (31 CFR § 1022.410).

³⁸ Federal Financial Institutions Examination Council, AML/CFT Exam Manual, 2014, page 281.

triggered when illicit activity is suspected. Often the starting point in relation to corporations is whatever information that is publicly available in the state registries, which most LEAs have access to.³⁹ Federal LEAs can then utilize judicial processes to obtain records of BO from FIs and the related corporations (in practice their named officers and representatives). These processes include the use of grand jury subpoenas, search warrants, and administrative subpoenas. In some cases, mutual legal assistance has to be sought to trace BO, and the authorities indicated this can, on occasion, prove challenging or slow.⁴⁰ A number of mechanisms have also been established to foster inter-agency cooperation and information exchange about BO among LEAs.⁴¹ Most LEAs believe that they regularly obtain BO information using these techniques, citing the case of Liberty Reserve⁴² as a very complex and successful example. It is, however, challenging for staff to ascertain how systematic or representative the successful cases are. In the case of trusts, the authorities indicated that the trustee is generally required by state common and statutory laws to maintain at all times the names of any other trustee, any protector, and all beneficiaries which can be obtained by LEAs through judicial processes.

26. Nonetheless, the use of investigative techniques may not always guarantee timely access by non-IRS LEAs to BO information. Although the range of investigative powers available to LEAs (and certain regulators)—at both the federal and state levels—to compel the disclosure of BO information is sound and widely used, the LEAs met by staff have found such processes time consuming and resource-intensive at times, depending on the specific circumstances of the case⁴³ and could require the commitment of greater resources. In addition, LEAs indicated that they would welcome legal reforms that would enable easier access to IRS information and introduce obligations for FIs and DNFBPs to collect BO information.

27. Moreover, the adequacy, currency, and accuracy of the BO information that could be obtained by LEAs is not guaranteed. As noted above, the availability of BO information held by the IRS and FIs requires some activity or other basis for a requirement to obtain an EIN or an account with a FI respectively. BO information that is collected on revised IRS Form SS-4 is available

³⁹ Many LEAs indicated that they have subscription services to private sector databases that consolidate all public information in the state registries.

⁴⁰ This might be because the BO is a nonresident or because a U.S. BO has used foreign entities as part of a U.S. corporation's ownership structure.

⁴¹ See Annex II for details. In addition, as described in paragraphs 81 and 329 of the 2006 MER, to alleviate the difficulties for other LEAs to obtain tax information, including in relation to BO, the IRS created a Lead Development Center to develop investigation leads relating to specific types of crimes using a combination of tax and publicly available information. The package of publicly available information can then be made available to non-IRS LEAs.

⁴² Liberty Reserve was a Costa Rica-based digital currency service that allegedly processed billions of dollars of illicit transactions. It was effectively shut down by U.S. authorities in May 2013, and its principals charged with ML offenses. It operated across multiple jurisdictions. The U.S. investigation involved obtaining BO information in relation to U.S. and foreign-based corporations. This information relied heavily on SARs and other information from FIs, investigative techniques (especially involving search warrants for email and other records), and the use of mutual legal assistance.

⁴³ Especially for multi-layered corporate ownership structures that require LEAs to repeat their techniques at each layer of the structure until they discover the BO.

to law enforcement, and/or can often be obtained through investigative techniques when there is an ongoing criminal investigation, including from FIs if a business relationship exists. Corporations with no U.S.-reportable profits or direct use of the U.S. financial system or otherwise required to obtain an EIN escape U.S. obligations to provide required information on “responsible party” to the IRS, and their BO information therefore cannot be obtained unless the corporation is under a criminal investigation.

International cooperation

28. **The relative ease with which U.S. corporations can be established, coupled with their perceived credibility internationally, creates the potential for U.S. corporations to be misused for the laundering of the proceeds of foreign predicate crimes.**⁴⁴ As noted above, foreign persons may find it convenient to create a U.S. corporation and use it for the laundering of the proceeds of criminal activities committed outside the United States, including foreign tax evasion. In addition, during discussions with LEAs, some indicated that they commonly come across situations where foreigners launder funds in the United States or other jurisdictions using U.S. corporations.

29. **Limitations on the availability of BO and the authorities’ inability to initiate investigations on behalf of foreign counterparts in some circumstances may hamper international cooperation.** For tax crimes, but not the laundering of the proceeds from tax crimes, the IRS can exchange BO information on U.S. corporations that have an EIN with foreign tax authorities based on bilateral tax agreements. However, for enquiries relating to U.S.-based corporations without an EIN and for non-tax related foreign requests for assistance in ML investigations, the U.S. authorities are not able to respond in identifying and exchanging information on BO unless they can initiate a criminal investigation in the United States that successfully discovers the BO of the subject corporation(s). This is a particular concern for any foreign requests related to laundering the proceeds of foreign tax evasion in the United States. In such cases, since tax evasion is not a predicate offense to ML in the United States, an investigation cannot be initiated in the United States to obtain the BO information to provide the requested assistance. With respect to international cooperation for tax purposes, the Organization for Economic Co-operation and Development’s Global Forum on Transparency and Exchange of Information for Tax Purposes has found the United States to be not fully compliant with its principles in relation to availability of information on ownership.⁴⁵ The unsatisfactory availability of BO information on U.S.-based

⁴⁴ Some recent examples can be found in a *New York Times* article “Stream of Foreign Wealth Flows to Elite New York Real Estate” (<http://www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html? r=0>) about foreigners using U.S. shell companies to channel funds of questionable source to purchase and hold high-end real estate in New York City. This article was one of a series of *New York Times* articles demonstrating the ease with which foreign buyers can acquire U.S. property using shell companies. The reporters took more than one year to reveal the underlying owners of some property “by searching business and court records from more than 20 countries, interviewing dozens of people with close knowledge of the complex, examining hundreds of property records and connecting the dots from lawyers or relatives named on deeds to the actual buyers.”

⁴⁵ See [OECD 2014 Tax Transparency Report on Progress](#)

corporations is likely to frustrate international cooperation, not just in relation to requests to the United States relating to BO information, but also in the sense of impeding reciprocity that the United States needs to obtain cooperation from foreign counterparts.

	Tax crimes	Non-tax related
Criminal investigation initiated in the United States	<ul style="list-style-type: none"> • Through the IRS based on bilateral agreements (BO information available for exchange limited to that of those corporations with an EIN); and • Through other LEAs based on bilateral agreements or other mechanisms 	<ul style="list-style-type: none"> • Through other LEAs based on bilateral agreements or other mechanisms
No criminal investigation initiated in the United States ⁴⁶	<ul style="list-style-type: none"> • Through the IRS based on bilateral agreements (BO information available for exchange limited to that of those corporations with an EIN). 	<ul style="list-style-type: none"> • Appears to be unable to assist

E. Recommendations

30. The authorities regularly use investigative techniques to obtain BO information about U.S. corporations and trusts. Their use of such techniques could be made more effective if requirements to collect and maintain BO information were strengthened. The authorities are recommended to expeditiously take steps to ensure that accurate BO information of U.S. corporations and trusts can be accessed by the competent authorities in a timely manner, in particular by: (i) requiring that such information is collected and maintained by either registries of corporations and trusts, agents serving corporations and trusts, or corporations and trusts, and accessible by competent authorities in a timely manner; and (ii) requiring all FIs and DNFbps, in particular trust and company service providers (TCSPs) including lawyers and accountants providing such services, to identify the beneficial owners of corporations and trusts and take reasonable measures to verify those identities. In addition, in order to facilitate combating the laundering of tax crimes, including through international cooperation, the authorities are recommended to make serious tax crimes predicate offenses to ML.

⁴⁶ Laundering in the United States of proceeds associated with taxes evaded abroad cannot trigger criminal investigations in the United States since tax crimes are not predicate offense to ML in the United States.