© 2010 International Monetary Fund

July 2010
IMF Country Report No. 10/253

United States: Publication of Financial Sector Assessment Program Documentation—Technical Note on Anti-Money Laundering/Combating the Financing of Terrorism

This paper was prepared based on the information available at the time it was completed on July 23, 2010. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of the United States or the Executive Board of the IMF.

The policy of publication of staff reports and other documents by the IMF allows for the deletion of market-sensitive information.

Copies of this report are available to the public from

International Monetary Fund ● Publication Services
700 19th Street, N.W. ● Washington, D.C. 20431
Telephone: (202) 623-7430 ● Telefax: (202) 623-7201
E-mail: publications@imf.org ● Internet: http://www.imf.org

International Monetary Fund
Washington, D.C.

FINANCIAL SECTOR ASSESSMENT PROGRAM

UNITED STATES OF AMERICA

THE 2006 ASSESSMENT OF THE ANTI-MONEY LAUNDERING/COMBATING THE FINANCING OF TERRORISM REGIME AND RECENT DEVELOPMENTS

TECHNICAL NOTE

JULY 2010

INTERNATIONAL MONETARY FUND
LEGAL DEPARTMENT

Contents Page

Glossary 3

I. Introduction 3

II. Overview 4
A. Money Laundering and Terrorism Financing Situation.................................. 4
Money laundering 4
Terrorism financing 8
AML/CFT strategies and priorities 9
B. Key Findings from the Mutual Evaluation Report and Progress Reports................ 9

III. Financial Action Task Force 2006 Anti-Money Laundering/
Combating the Financing of Terrorism Mutual Evaluation and
Subsequent Developments 10
A. Legal System and Related Institutional Measures 10
Main findings of the 2006 MER.. 10
Developments since the 2006 MER... 11
B. Preventive Measures—Financial Institutions... 12
Main findings of the 2006 MER 12
Developments since the 2006 MER... 13
Developments since the 2006 MER... 18
C. Preventive Measures—Designated Non-Financial Businesses and Professions.... 19
Main findings of the 2006 MER 19
Developments since the 2006 MER... 19
D. Legal Persons and Arrangements and Non-Profit Organizations 23
Main findings of the 2006 MER 23
Developments since the 2006 MER... 24
E. National and International Cooperation 26
Main findings of the 2006 MER 26
Other developments since the 2006 MER 27
F. Resources and Statistics... 29
Main findings of the 2006 MER 29
Developments since the 2006 MER... 29

Glossary

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
APG	Asia Pacific Group on Money Laundering
BSA	Bank Secrecy Act
CDD	Customer due diligence
CFR	Code of Federal Regulation
CIP	Customer Identification Program
DNFBPs	Designated non-financial business and professions
DOJ	Department of Justice
FATF	Financial Action Task Force
FIs	Financial institutions
FinCEN	Financial Crimes Enforcement Network
FINRA	Financial Industry Regulatory Authority
FIU	Financial Intelligence Unit
IRS	Internal Revenue Service
MER	Mutual evaluation report
ML	Money laundering
MSBs	Money services businesses
NPOs	Non-profit organizations
NRPM	Notice of Proposed Rulemaking
OFAC	Office of Foreign Assets Control
OEM	Other enforceable means
PEP	Politically-exposed person
POC	Proceeds of crime
SARs	Suspicious activity reports
SR	Special Recommendation
TCSPs	Trust and company service providers
TF	Terrorism Finance
TN	Technical note
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

I. INTRODUCTION

1. **This technical note (TN) is intended to provide an overview of the anti-money laundering and combating the financing of terrorism (AML/CFT) regime of the United States.** It is based on the findings of the June 2006 mutual evaluation report (MER) prepared by the Financial Action Task Force (FATF) with respect to the U.S. compliance with the FATF 40 Recommendations plus 9 Special Recommendations, and on more recent information provided in two progress reports made by the United States to the FATF (May 2008 and June 2009), and one report to the Fund in the context of the 2009/10 U.S. FSAP assessment. The TN focuses on progress made since the 2006 FATF evaluation by the U.S. authorities to the legal, regulatory, and institutional framework to address the most significant deficiencies identified in the MER. It also indicates those areas where no or limited progress has been made. This TN aims at providing a factual update of developments in the U.S. AML/CFT regime; it does not constitute a reassessment by the Fund of the U.S. AML/CFT regime and does not re-rate levels of compliance with the FATF standard. In addition, it includes estimates of the amount of proceeds generated by criminal activity since the MER, and encourages the United States to take this information into account in evaluating the money laundering (ML) situation and the measures adopted.

2. **The latest mutual evaluation of the U.S. AML/CFT framework was conducted jointly by the FATF and the Asia Pacific Group on Money Laundering[1] (APG) during two on-site visits to the United States from November 7–18, 2005, and January 9–23, 2006.** The MER was adopted by the plenary meetings of both organizations—in June 2006 by the FATF and in July 2006 by the APG. The MER provided an overview of the AML/CFT measures in place in the United States during these visits and immediately thereafter. It was based on the review of the relevant AML/CFT legislation, regulations and other requirements, the institutional framework, and other systems in place to deter ML and terrorism finance (TF) through financial institutions and designated non-financial businesses and professions (DNFBPs). The MER indicated the level of compliance with the FATF 40+9 Recommendations, taking into account the effectiveness of implementation of AML/CFT measures in place, and provided recommendations on how certain aspects of the framework could be strengthened.

[1] The APG is an FATF-style regional body for the Asia/Pacific region, of which the United States is also a member.

3. **The progress reports to the FATF were made pursuant to the FATF procedures that require evaluated members to report back to the FATF plenaries on steps taken to address deficiencies noted in their MERs with respect to the Recommendations that were rated as partially compliant or non-compliant.**[2] In the case of the United States, these were Recommendations 5 (customer due diligence (CDD)), 12 (CDD and recordkeeping for DNFBPs, 16 (suspicious transaction reporting and internal controls for DNFBPs), 24 (regulation and supervision of DNFBPs), 33 (transparency of legal persons), and 34 (transparency of legal arrangements). In line with FATF procedures, the United States is expected to make its next progress report to the FATF in June 2010.

4. **The report to the Fund described progress in addressing deficiencies identified in the 2006 MER relating to the FATF Recommendations that were rated partially compliant or non-compliant, and highlighted other significant AML/CFT developments since 2006.**

5. **The FATF has been discussing several issues regarding the AML/CFT standard that are relevant to key deficiencies identified in the MER.** To the extent that these discussions result in changes to the FATF Recommendations (e.g., regarding customer due diligence, application of the risk-based approach to AML/CFT, and transparency of beneficial ownership and control of corporate vehicles and trusts, and DNFBPs), the outcome of those deliberations may have a direct impact on future U.S. compliance with the standards.

II. Overview

6. **The following sections of the TN provide summary background information on the U.S. ML and TF situation, strategies, and priorities, as well as summary information from the MER and the progress reports.**

A. Money Laundering and Terrorism Financing Situation

Money laundering

7. **Since the time of the 2006 MER, both the availability of U.S. criminal statistics and the general approach to understanding ML risks have evolved.** The MER, taking asset confiscation data as its starting point, came to the conclusion that illicit trafficking in narcotics is a major source of proceeds for ML in the United States and that fraud and firearms violations are also significant sources of confiscated assets. It stated that the

---

[2] Under the 2004 Methodology for Assessing Compliance with the FATF 40 Recommendations and the 9 Special Recommendations, there are four levels of compliance: compliant, largely compliant, partially compliant, and non-compliant.

prevalent method of ML, as reported in suspicious activity reports (SARs), involved the use of cash, wire transfers, and correspondent accounts by both individuals and businesses.

8. **This note does not attempt to exhaustively re-analyze the U.S. ML situation nor report comprehensively on profit-making crime in the United States.** However, current publicly available data on domestic proceeds of crime (POC) raises questions about the relative significance of drug-related proceeds vis-á-vis those from other profit-making crimes. Much further work would be required to make anything more than impressionistic suggestions; estimates of POC are problematic, imprecise, and involve collating non-harmonized data from widely disparate sources. For example, 2001–2005 estimates of the annual proceeds of illicit trafficking in narcotics in the United States are in the $60–$65 billion range.[3] However, these figures are difficult to reconcile with the 2005 United Nations Office on Drugs and Crime (UNODC) World Drug Report, which suggests that the combined North American (U.S., Mexican, and Canadian) retail sales of cocaine, opiates, cannabis, amphetamines, and ecstasy are close to $140 billion.[4] Turning to other less documented crimes, we can find estimates for various forms of fraud—securities, insurance, mortgage—of some $125 billion,[5] and the U.S. Department of Health and Human Services presented an estimate for health care fraud of around $60 billion.[6] Verifying each of these specific estimates would require much more detailed research than would be appropriate for this note. Nevertheless, comparing the upper range of estimates for proceeds of drug trafficking with the lower range estimates for fraud leads to the conclusion that fraud and other white collar crimes could generate proceeds at least equal to, if not significantly greater than, those associated with drug trafficking.

---

[3] Joseph T. Rannazzisi, Deputy Assistant Administrator, DEA-DOJ, regarding “Breaking the methamphetamine Supply Chain: Law Enforcement Challenges” before the Senate Committee on Finance, September 12, 2006; “Stumbling in the Dark,” *The Economist*, July 26, 2001.

[4] United Nations Office of Drugs and Crime, *2005 World Drug Report*, Volume 1, pp. 130-143 (Vienna, 2006). These levels invite comparison to an earlier (1989) estimate of the Financial Action Task Force (FATF) of U.S. drug-related POC of about $108 billion. FATF Working Group on Statistical and Methods, *Narcotics Money Laundering - Assessment of Scale of the Problem*, 1989, Financial Action Task Force on Money Laundering, *report*, February 7, 1990.

[5] U.S. presentation to the FATF, “Fraud, Financial Filings, and Market Effects” (October 2009). This overall level is generally consistent with press reports on several of the more prominent individual cases, *see, e.g.*, “Another Week, Another Lawyer Change for Allen Stanford,” *The Wall Street Journal*, May 18, 2010; Diana B. Henriques, “Madoff Judge Endorses Trustee’s Rule on Losses,” *The New York Times*, March 1, 2010.

[6] William Corr, J.D., Deputy Secretary, U.S. Department of Health and Human Services, "Effective Strategies for Preventing Health Care Fraud" testimony before the Senate Judiciary Committee, October 28, 2009. It is not clear if this should be considered as a component of the insurance fraud cited above, or an additional form of fraud.

9. **This observation may have important implications for AML/CFT policy, priorities, and systems, since the laundering typologies associated with traditional cash-based drug trafficking on the one hand, and fraud and other white-collar crimes on the other, can be very different.** A key feature of fraud and other white-collar crimes is that the proceeds generated are often already in the formal financial system in non-cash form, obviating the need for placement and thus by-passing most entry level CDD measures. Another key feature is the importance of the use of corporate vehicles and opaque beneficial ownership information, as emphasized in numerous government reports and legislative testimony.[7] While the U.S. AML/CFT regime has significantly evolved over time, U.S. authorities may wish to examine the extent to which it has adapted from an historical focus on drug trafficking-related ML to address the total range of ML risks facing the U.S. financial system and economy. For example, one conclusion of the 2006 MER, that stricter implementation of the AML/CFT requirements in the financial sector has tended to lessen the use of financial institutions (FIs) for ML, could be correct for drug-related and other offenses associated traditionally with the cash-based underground economy, while being less accurate for many white-collar crimes. An even greater strategic and tactical re-evaluation could be warranted should the United States make tax evasion a predicate offense for ML[8]

10. **Another observation that derives from these individual POC estimates is that the overall POC level is likely to be high in absolute terms.** Since the U.S. economy is the largest in the world, it is reasonable to expect that its illicit sector generates significant proceeds. More work would have to be done before confidently aggregating the estimates for the individual crimes noted above, to say nothing of other crimes such as prostitution, robbery

---

[7] E.g., DOJ Senate Testimony November 2006; FinCEN Senate Testimony November 2006; DOJ Senate Testimony June 2009; Department of Homeland Security Senate Testimony June 2009; Treasury Senate Testimony November 2009, DOJ Senate Testimony November 2009; and Government Accountability Office report April 2006.

[8] There are no accurate or credible estimates of U.S. tax evasion, which is a component of the tax gap. The tax gap includes non-payment of owed taxes due to: taxpayer error, conflicting legal interpretations, misinterpretation of the facts, and outright tax evasion. Three sources suggest that the total U.S. tax gap is in the region of $500 billion. The first report indicates that the current value of the net Federal tax gap is around $400 billion (or around 15 percent of gross tax receipts). This estimate includes only a fraction of international tax evasion, a fraction of excise evasion, and excludes evasion of state and local taxes, from U.S. Treasury Report "Update on Reducing the Federal Tax Gap and Improving Voluntary Compliance," 2009. The second report indicates that the international tax gap was estimated at $100 billion or more annually in 2009 and contains unverified material suggesting that around half of that may be evasion, see U.S. Department of Treasury, Treasury Inspector General for Tax Administration, Office of Inspections and Evaluations, 27 Jan. 2009. A Combination of Legislative Actions and Increased IRS Capability and Capacity Are Required to Reduce the Multi-Billion Dollar U.S. International Tax Gap. The third set of reports, estimates of tax gaps at the state level, suggest that state level tax gaps could average around $1 billion per state or $50 billion annually (see for example, State of California, Legislative Analyst's Office. Feb. 2005. *California's Tax Gap).*

and other property-related crimes, counterfeiting and smuggling. [9] However, for the purposes of strategic policy-making in this area, precision is less critical than understanding the orders of magnitude. Adjusting the U.S. government-sourced estimates for drug trafficking, fraud, and the other crimes cited above into real 2009 dollars, suggests a minimum figure of around $275 billion (excluding tax evasion), which could be considered a point of departure for such an understanding. Whatever the actual number, the U.S. domestic POC figure is probably among the highest in the world.[10]

11. **Moreover, the United States' role as one of the important international financial centers in the world also exposes it to ML from crimes committed in other countries.** While one component of criminal banking and investment strategy clearly involves a desire for concealment and secrecy, it is probable that U.S. financial and real estate assets are attractive to criminals as well as to law-abiding investors, and that a significant percentage of foreign criminal assets that are expatriated from their country of origin will end up in the United States—especially in the final "integration" stage of the ML process.[11] This hypothesis is strengthened by numerous reported ML cases involving large amounts of proceeds

---

[9] Government and academic analysts have ventured various valuation estimates for other significant profit-generating crimes in the United States, all of which should be further tested for consistency and accuracy. For example, sexual exploitation has been estimated at $14.6 billion (Anne Rasmusson, "Commercial Sexual Exploitation of Children: A Literature Review," The Alliance for Speaking Truths on Prostitution and The Center for Urban and Regional Affairs of the University of Minnesota, June 1, 1999 (derived from estimated expenditures of $40 million per day in 1999); property crimes at $17 billion (U. S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States 2008*, September 2009); cigarette smuggling at $5 billion (Associated Press, "ATF stings put 250M illegal cigarettes on streets," Yahoo News, January 22, 2010—citing a Department of Justice estimate of lost annual tax revenues for state and local governments); and the counterfeiting and piracy of products at $261 million (U.S. GAO. Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods, GAO-10-423, April 2010—estimating domestic value of goods seized in one year). In general, the statistical situation with regard to estimating proceeds of crime in the United States is far from satisfactory and work on improving the empirical basis for assessing ML risk and developing AML policy should be a priority.

[10] The total domestic POC is not equivalent to the amount of money laundered in a jurisdiction. First, some domestic proceeds may be expatriated for laundering in other countries and some foreign proceeds are imported and laundered domestically. Second, as tax evasion (among some other behaviors) is not currently a predicate crime for ML, its proceeds would be criminal, but transactions using those proceeds may not be laundering. Finally, ML is usually conceived in terms of the financial transactions that are involved, which would be a different measure than the value of the proceeds that provide the "raw material" for laundering.

[11] One illustrative measure of the attractiveness of U.S.-based assets is the inward portfolio investment statistics provided by the Coordinated Portfolio Investment Survey (CPIS). According to 2008 data, over 20 percent of the pool of all portfolio investments invested outside of the country of origin are held in U.S. equities and long- and short-term debt. International Monetary Fund, *2008 Coordinated Portfolio Investment Survey.*

originating from other countries.[12] In this regard, U.S. authorities should be encouraged to continue their efforts to broaden the ML criminalization provisions to fully include the laundering of the proceeds of some significant foreign crimes—including fraud, as noted in the 2006 MER. On the other hand, U.S. criminals who expatriate their illicit proceeds to other jurisdictions, including through cash smuggling, wire transfers, and correspondent banking facilities, create ML threats and challenges for other countries, including those with weak AML/CFT regimes and more limited resources.[13] This implies a proportional responsibility for U.S. authorities in the area of international cooperation, and highlights the importance of effectively addressing the current lack of compliance with FATF Recommendations on transparency of ownership and control of companies and trusts.

12. **The size of the U.S. economy and its leading position in the global economy and financial system thus raise more general issues for ML risk analysis and strategy.** The question is not whether the U.S. AML/CFT system is robust in absolute terms—the FATF assessment report makes it clear that that is the case. The question is whether it is sufficiently robust to meet the special challenges that arise from having high domestic POC and from being an attractive venue for foreign criminals to bring their illicit assets. In this regard, the U.S. authorities should be encouraged to continue their efforts to improve and strengthen their AML/CFT regime to meet the high level of relative threat with which it is faced.

Terrorism financing

13. **Terrorism finance has been a main concern for the U.S. authorities since the events of September 11, 2001.** At the time of the mutual evaluation, no clear trend in the volume of suspicious activity reports (SARs) related to TF had been discerned. The authorities believe that wire transfers and non-profit organizations (NPOs) are vulnerable to TF. Enhanced enforcement of anti-terrorism laws has also made the use of NPOs for TF purposes less transparent. Investigations of TF cases have identified the use of front companies and nominees to wire funds, as well as FIs and money servicing businesses

---

[12] For example, some $7.5 billion of Russian assets was laundered through the Bank of New York in the late 1990s (Transcript of the Allocation Hearing Pursuant to the Guilty Plea of Lucy Edwards in the United States District Court for the Southern District of New York, February 16, 2002); Riggs Bank held between $4–8 million of General Augusto Pinochet's illegal deposits (U.S. Senate Permanent Subcommittee on Investigations – "Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study Involving Riggs Bank," released in conjunction with the Permanent Subcommittee on Investigations' Hearing on July 15, 2004)); and Ukrainian former prime minister Pavel Lazarenko was convicted of laundering $21.7 million of proceeds of his corruption in the United States, including the purchase of a $6.7 million mansion (U.S. v Lazarenko, slip op. 06-10592, 9th Cir. Ct App, Sept 26, 2008.

[13] Those threats and challenges also arise when foreign criminals, who carry out part of their laundering in the United States, expatriate their partially-laundered proceeds to other countries.

(MSBs). Reverse structuring of transactions has also been observed through the use of large transaction amounts to minimize paper trails.

AML/CFT strategies and priorities

14. **The United States has been committed to combating ML and TF on several fronts, including through aggressive financial investigations.** At the time of the mutual evaluation, the U.S. strategy was based on three main goals: (1) cut off more effectively access by criminals to the international financial system; (2) enhance the ability to target major ML and TF organizations and systems; and (3) strengthen and refine the AML/CFT regime for financial services providers. The authorities stated that highest priority has been given to safeguarding the stability of its core financial system, in particular depository institutions. The strategy included, *inter alia*, private sector outreach and interagency coordination and information sharing, and prioritized the following objectives:

(a) prevent the misuse of charities to aid terrorists;
(b) develop measures to deal with the risk posed by cash;
(c) examine the feasibility of regulating new payment/non-face-to-face systems;
(d) enhance supervision and enforcement of Bank Secrecy Act (BSA) requirements;
(e) enhance private sector consultation;
(f) provide more and better guidance to financial institutions;
(h) improve consistency in the implementation of AML/CFT regulation at all levels of government; and
(j) launch Bank Secrecy Act (BSA) Direct to establish and maintain a government-wide data access service for information collected under the BSA and other sources.

15. **The recently issued U.S. National Security Strategy (May 2010)—which includes sections on deterring threats to the international financial system, strengthening international norms against corruption, and transnational criminal threats and threats to governance—reinforces the continuing relevance of financial integrity to the strength of the U.S. financial system and economy and to national security.**

B. Key Findings from the Mutual Evaluation Report and Progress Reports

16. **At the time of the FATF mutual evaluation, the United States had implemented an AML/CFT system that was broadly in line with the international AML/CFT standard.** The evaluators found that the United States had significantly strengthened its AML/CFT regime since its previous mutual evaluation (June 1997), including through enhanced legislation and aggressive law enforcement activities. The most high-profile development was the enactment of the USA PATRIOT Act (October 2001), both an anti-terrorism and anti-money laundering statute. Notwithstanding the above, the evaluators

considered that there remained a number of deficiencies in the overall AML/CFT framework, notably in the preventive measures applicable to financial institutions and DNFBPs, and in the transparency of legal persons and arrangements.

17. **As of March 2010, many of the recommendations made by the evaluators to address the identified deficiencies had not been addressed in full or in part, but efforts are underway, notably to introduce uniform legislation that would require information on beneficial ownership and control of legal persons and arrangements across all the states.** These issues are discussed in more detail in the following sections.

III. Financial Action Task Force 2006 Anti-Money Laundering/Combating the Financing of Terrorism Mutual Evaluation and Subsequent Developments

A. Legal System and Related Institutional Measures

Main findings of the 2006 MER

18. **The evaluators found that the United States had implemented an AML/CFT system that was broadly in line with the international standard and that it had significantly strengthened its AML/CFT regime since the previous mutual evaluation, including through enhanced legislation and aggressive law enforcement action.** The United States criminalized ML and the TF covering most of the categories of offenses required by the FATF standard. The requirements of the United Nations (UN) conventions and Security Council Resolutions on TF were effectively implemented. The report noted that U.S law enforcement authorities had achieved impressive results with respect to investigations and prosecutions, as well as asset freezing, seizure, and confiscation.[14] The 2006 MER noted that the Financial Crimes Enforcement Network (FinCEN) is the United States' financial intelligence Unit (FIU), and that FinCEN substantially met the FATF standard.

[14] Note that the annual amount of proceeds of crime confiscated in the United States as indicated in the 2006 MER was about $240 million (although this total is likely to have understated the actual situation as it is not clear that it included all federal level confiscations and it excluded state level confiscations). The authorities have suggested that current confiscations amount to approximately $2 billion annually (apparently including deferred prosecution agreement settlements but excluding confiscations at the state level—more precise information is difficult to obtain). The $2 billion represents less than one percent of the estimated annual POC (excluding tax crimes). This suggests that, while the United States may have an effective system for confiscating proceeds of crime, there is significant room for improvement in this area. In addition, the authorities may wish to consider improving their systems for collecting, collating, and publishing information about the amount of proceeds of crime confiscated.

Developments since the 2006 MER[15]

19. **In the 2006 MER, the evaluators noted the need to expand the list of domestic and foreign predicate offenses for money laundering, revise the system used to list Taliban-related names, enhance the "equivalent value" confiscation regime, and broaden the definition of "transaction" to cover all conduct consistent with the Vienna and Palermo Conventions.** The authorities reported that legislative proposals have been drafted and are currently being discussed with various members of Congress. The proposals seek to amend the ML statutes in order to expand the list of predicate offenses to include any offense in violation of the laws of the United States, punishable by imprisonment for a term exceeding one year, and to include any act or activity occurring outside of the United States that would constitute an offense if the act or activity had occurred within the jurisdiction of the United States.

20. **The United States also indicated in its March 2010 update report that, subsequent to the 2006 MER, it closed a significant loophole in its ML legislation that was created by a June 2008 U.S. Supreme Court decision.** In its decision, the U.S. Supreme Court defined "proceeds" as "net profits" and not as "gross receipts" (See *United States v. Santos*). Subsequently, in May 2009, *Santos* was legislatively overruled with the addition of a new paragraph to the federal AML statute, which now defines "proceeds" to include "gross receipts" of an unlawful activity.

21. **In the 2006 MER, the evaluators recommended to strengthen FinCEN's analytical outputs (for law enforcement purposes), and to continue efforts to improve the quality of SARs received from all sectors.** They also recommended that FinCEN adhere to the principles governing international information exchange in terrorism-related requests for assistance from foreign FIs. With regard to increasing the value added to its analytical outputs and adherence to the principles governing information exchange, no significant progress has been reported. However, FinCEN is reported to have taken the following principal measures to improve suspicious activity reporting practices and the quality of SARs:

- In 2006, FinCEN began receiving quarterly SAR error reports for various sectors that are used to identify financial institutions with systemic errors, in order to refer these institutions to their regulators. These reports are revised yearly and were expanded in 2009 to include a separate report on the insurance industry SARs.

- In March 2007, FinCEN implemented an improved SAR for MSBs that also provided data in a format more suitable for law enforcement and analysts.

---

[15] See Table 1.

- In October 2007, FinCEN published a new reference on common errors seen in SAR filings that provides tips for avoiding these errors and makes suggestions for establishing more efficient and effective AML programs.
- Provided SAR feedback to the insurance and casino sectors with the intention to do so for other sectors.
- Published analytical reports based on Bank Secrecy Act/SAR filings focused on mortgage loan fraud and ML, with publications made in November 2006, April 2008, February and March 2009, and February 2010.
- Focused its twice-yearly publications, *The SAR Activity Review–By the Numbers*, and *The SAR Activity Review–Trends, Tips, and Issues,* on particular industries (so far covering securities, commodity futures firms, and casinos).
- Provided guidance to the industry on how to file SARs and enhanced the electronic SAR filing process to reduce filing errors.

B. Preventive Measures—Financial Institutions

Main findings of the 2006 MER

22. **At the time of the mutual evaluation, the vast majority of deposit-taking institutions were subject to the full range of AML/CFT requirements, including those relating to customer identification (customer identification program (CIP)), internal controls and procedures (AML program), record keeping, and reporting of suspicious activities.** In the securities sector, brokers and futures commission merchants were subject to similar requirements, but some investment advisers and commodity trading advisors (in their capacity as asset managers) were not. Although life insurers (since May 2006) and MSBs were required to establish AML programs and file SARs, they were not subject to the CIP rules except when conducting funds transfers in amounts above $3,000. Overall, the evaluators found that U.S. legislation addressed in detail a substantial number of the FATF requirements on CDD. However, they noted that certain key elements were not fully addressed by law or regulation as required under the standard but rather by "other enforceable means" (OEM), in particular, the examination manual used by the Federal Banking Agencies. The evaluators also concluded that there were no requirements for financial institutions to look beyond a customer to establish the identity of the beneficial owners in all cases.

23. **There were extensive AML/CFT record-keeping requirements for most FIs, although the requirements for the BSA-covered products in the insurance sector were more limited.** The requirements for wire transfers, however, were not deemed in line with the standard because the applicable threshold beyond which the ordering institution was required

to obtain, verify, and maintain full originator information (US$3,000) was above the threshold designated in the standard (US$1,000).

24. **The MER also noted that the United States had an extensive but complex regulatory and supervisory framework for AML/CFT.** FinCEN had core responsibility for administering the regulatory regime under the BSA and has delegated its authority to examine FIs for compliance with the BSA to the eight federal financial regulatory agencies responsible for functional supervision of the relevant financial sectors. In certain cases, this authority has been further delegated to self-regulatory authorities responsible for functional supervision. Although some parts of the financial services sector were regulated for safety and soundness purposes at the state level which, according to the United States often includes compliance with AML requirements, there had been no delegation of BSA compliance supervision responsibilities to the state authorities. The evaluators noted, however, that there was close cooperation between federal and state regulatory authorities on compliance supervision. The United States has indicated that most states use the Federal Financial Institutions Examination Council (FFIEC) BSA/AML Examination Manual as a resource for their examiners.

25. **In general, the evaluators concluded that regulators have broad legal authority and adequate powers to supervise, conduct examinations, obtain information, and enforce the BSA requirements against financial institutions and their employees.** They noted evidence that these powers were being used regularly and extensively. The authorities reported significant additional regulatory enforcement actions taken against FIs found to be non-compliant with AML requirements since 2006.

Developments since the 2006 MER

26. **Recommendation 5 was rated as partially compliant. Evaluators identified eight key deficiencies for which recommendations were made.** These are discussed below along with the follow-up steps taken by the U.S. authorities.

1) **Issue:** No obligation in law or regulation to identify beneficial owners except in very specific circumstances (i.e., correspondent banking and private banking for non-U.S. clients).

Recommendation: Introduce a primary obligation to identify the beneficial owners of accounts (which may, of course, be implemented on a risk-based approach with respect to low-risk customers or transactions).

Update: The United States reported limited progress with respect to this recommendation. The authorities reported issuing guidance on obtaining customer beneficial ownership information and developing a comprehensive strategic action plan to effectively enhance access to beneficial ownership information. While not directly related to this recommendation, the United States also reported that it is assessing vulnerabilities related to

corporate transparency, including conducting outreach and developing a strategy for dealing with problems associated with shell companies and their beneficial ownership. No primary obligation has been introduced requiring FIs to identify beneficial owners of accounts. In March 2010, the United States issued multi-agency guidance (Guidance on Obtaining and Retaining Beneficial Ownership Information) that seeks to clarify and consolidate "existing regulatory expectations" for obtaining beneficial ownership information for "certain accounts and customer relationships."[16] The authorities also acknowledge that there are still fundamental unresolved deficiencies regarding the availability of beneficial ownership and control information with respect to legal persons and arrangements (see discussion of measures being considered above and for FATF Recommendations 33 and 34).[17]

2) **Issue:** No explicit obligation to conduct ongoing due diligence, except in certain defined circumstances.

Recommendation: Introduce an explicit obligation that financial institutions conduct ongoing due diligence, rather than rely on an implicit expectation within the SAR requirements and on the existing guidance.

Update: The authorities did not report any progress with respect to this recommendation. The United States continues to maintain that the ongoing due diligence requirement is met through the AML program and SAR legal obligations of FIs. They state that the BSA AML program requirement requires covered FIs to ensure and monitor compliance with the BSA requirements, including through a system of internal controls to assure "ongoing compliance."[18]

The authorities also indicated that for securities broker-dealers, the Financial Industry Regulatory Authority (FINRA)—the self-regulatory organization for securities dealers)—has issued an AML template for small firms to assist broker-dealers comply with their BSA

[16] The guidance does not alter or supersede previously issued regulations, rulings, or guidance related to CIP requirements and is not set out in law, regulation, or other enforceable means as required by FATF Recommendation 5.

[17] Additional Elements 33.4 and 34.3 of FATF Recommendations 33 and 34 point to the desirability of having measures in place to facilitate access by financial institutions to beneficial ownership and control information of legal persons and arrangements to allow them to more easily verify the customer data. To the extent that this is lacking, the ability of financial institutions to effectively implement their due diligence requirements under the applicable FATF Recommendations may be adversely affected.

[18] FATF Recommendation 5 establishes an explicit obligation (to be set out in law or regulation) to conduct ongoing due diligence on business relationships. This obligation extends to scrutinizing transactions or customer activities and updating of customer records.

obligations, particularly with respect to the detection and reporting of suspicious activities.[19] The authorities further indicate that the federal banking agencies consider CDD to be an ongoing process and expect FIs to do so on a risk-sensitive basis through their examination programs.[20] The authorities cite enforcement actions taken by federal banking and securities regulators for non-compliance with the AML program requirement including for deficient CDD and enhanced due diligence practices.

3) **Issue:** Customer identification for occasional transactions limited to cash transactions only.

Recommendation: In the case of occasional transactions, extend the customer identification obligation to non-cash transactions.

Update: The authorities did not report any progress with respect to this recommendation. They assert that it is inconceivable that an FI would conduct an occasional transaction utilizing non-cash instruments, and that a bank would first require a non-account holder to either open an account or convert the instrument to cash. They further state that no examples were identified during the assessment where such non-cash transaction had occurred.[21]

4) Issues 4) and 8) were addressed together in the U.S updates:

Issue 4): No requirement for life insurers issuing covered insurance products to verify and establish the true identity of the customer (except for those insurance products that fall within the definition of a "security" under the federal securities laws).

Issue 8): The effectiveness of applicable measures in the insurance sector (which came into force on May 2, 2006) could not be assessed.

---

[19] The FINRA template is not a law or regulation and acknowledges that CDD may not be explicitly required by the BSA AML rules. It does, however, state that it is not possible to have an adequate AML program or suspicious activity reporting program without conducting appropriate ongoing customer due diligence.

[20] FATF Recommendation 5 stipulates that this requirement be set out in law or regulation.

[21] FATF Recommendation 5 requires the obligation to be set out in law or regulation. The Expanded Procedures of the BSA examination manual used by federal banking regulators, e.g., under Funds Transfers (page 20) procedure 6; and of section 12 of the FINRA small firm AML template for the securities sector "Suspicious Transactions and BSA Reporting" (*Rule: 31 C.F.R. §103.33(f) and (g))*, suggest that in the U.S. context, non-cash instruments are used for occasional transactions, e.g., purchase of travelers checks, money orders, cashier's checks, drafts, prepaid cards, etc., with personal checks and credit cards. One-off wire transfers can also be paid for and received using non-cash instruments.

Recommendation: Implement a CIP requirement for the insurance sector.

Update: The United States reported that it has issued a final ruling requiring an AML program for insurance companies that includes a customer identification requirement. The ruling requires insurers to obtain "all relevant customer-related information necessary for an effective program" either from its agents and brokers or from other sources. The authorities claim that such information should assist insurers to assess ML risks and identify red flags. The United States maintains that failure to adequately identify the true identity of customers could result in non-compliance with the regulatory obligations.[22]

FinCEN reviewed 641 SAR filings during a one-year period to identify, *inter alia*, typologies, patterns, trends, vulnerabilities, and ML risks in the insurance sector. The United States maintains that the SAR filing analysis shows that insurers are identifying and reporting suspicious activities including information on policyholders, beneficiaries and other parties associated with policies, and hence that the CIP program requirement is being implemented.[23]

5) **Issue:** No measures applicable to investment advisers and commodity trading advisors. (See first entry for Recommendation 5 above.)

Recommendations: Extend AML/CFT measures to investment advisers and commodity trading advisors, and the limited number of depository institutions that are currently not covered. Extend AML/CFT obligations (including the "politically-exposed persons (PEPs)," requirements) to investment advisers and commodity trading advisors, in line with those applicable to the rest of the securities industry.

Update: The authorities reported that FinCEN had issued a Notice of Proposed Rulemaking (NPRM) for AML programs for investment advisors and commodity trading advisors, but it was withdrawn in October 2008 because too much time had elapsed and FinCEN needed to re-issue a new one to make it meaningful. No new Notice of Rulemaking has been issued. The authorities are of the view that investment advisors and commodity trading advisors are not

---

[22] FATF Recommendation 5 imposes an explicit requirement to identify and verify customers' identity.

[23] The authorities did not indicate whether the sample of 641 SARs provides a reasonable basis for concluding that there is broad-based implementation in the insurance sector. Neither did they state whether any such conclusions were corroborated by the findings of on-site AML examinations. In addition, basing CDD compliance implementation solely on a very limited analysis of SARs is at best an indirect indicator, and inadequate.

entirely outside of the AML regime as they must conduct/hold client-related financial transactions/assets through other financial institutions that are subject to BSA requirements.[24]

6) Issues 6) and 7) were addressed together in the U.S. updates:

Issue 6): Verification of identity until after the establishment of the business relationship is not limited to circumstances where it is essential not to interrupt the normal course of business.

Issue 7): No explicit obligation to terminate the business relationship if the verification process cannot be completed.

Recommendation: Other than with respect to non-face-to-face business, securities transactions, and life insurance business, limit the circumstances in which institutions may open an account prior to completing the verification process, and introduce a presumption that institutions should close an account whenever the verification cannot be completed, for whatever reason. If necessary, accompany this with some form of indemnification against other conflicting statutes.

Update: The authorities maintain that the United States has met this requirement under the CIP requirements. To support this position, they state that the CIP requirement stipulates that programs "…must contain procedures for verifying the identity of a customer … within a reasonable period of time after the account is opened."[25] The CIP should also include provisions that describe "…the terms under which a customer may conduct transactions while the [financial institution] attempts to verify the customer's identity" and "[w]hen the [financial institution] should close an account, after attempts to verify a customer's identity fail." The authorities also state that their risk-based approach to customer identification would result in the termination of a business relationship where verification of identity of customers cannot be completed. The authorities prefer the risk-based approach over the more rigid requirement to close an account in the event that CDD cannot be completed.[26]

---

[24] See evaluators' recommendation above which calls for the mentioned institutions to be directly covered by the AML/CFT requirements.

[25] See, for example, 31 Code of Federal Regulation (CFR) 103.121(b)(2)(ii) and 31 CFR 103.122(b)(2)(ii).

[26] FATF Recommendation 5 explicitly requires FIs to terminate the business relationship in these circumstances.

Developments since the 2006 MER[27]

27. **In addition to the above, the 2006 MER made additional recommendations to improve the preventive measures regime for financial institutions with respect to FATF Recommendations that were not rated as non-compliant or partially compliant.** Limited progress was reported to address these recommendations except for the following measures:

Enhanced BSA Examinations of MSBs

28. **The Internal Revenue Service (IRS) reported that it has increased the number of BSA examiners to 385, an increase of 70 since the 2006 MER.** In addition, the IRS has:

- Trained BSA examiners to conduct MSB examinations and increased the number of examinations of MSB principals.
- Entered into Memoranda of Understanding (MOUs) with 43 states and Puerto Rico that allow for comprehensive exchange of information and reporting on licensed and chartered MSBs, including information related to examinations and BSA violations. Standardized forms are being tested for state reporting to the IRS.
- Prepared draft procedures for conducting joint examinations of MSBs and has commenced concurrent examinations with select states. This should allow for the conduct of more efficient cost effective examinations.
- In concert with FinCEN and state regulators, developed a BSA/AML examination manual for MSBs that contains risk-based elements. The IRS, FinCEN, and state representatives have provided training to IRS and state examiners on how to use the manual.
- Identified an increased number of MSBs including through improved information sharing with FinCEN and state financial regulators.

Proposed AML program rule for non-bank residential mortgage lenders and originators

29. **On July 15, 2009, FinCEN issued an Advance NPRM to solicit public comment on a wide range of questions pertaining to the possible application of AML program and SAR regulations to non-bank residential mortgage lenders and originators.**

---

[27] See Table 1.

C. Preventive Measures—Designated Non-Financial Businesses and Professions

Main findings of the 2006 MER

30. **The United States was found to be non-compliant with the following DNFBP-related recommendations: Recommendation 12 (CDD and recordkeeping for DNFBPs) and 16 (suspicious transaction reporting and internal controls); and partially compliant with Recommendation 24 (regulation and supervision of DNFBPs).** The evaluators noted that measures were being considered to extend the AML/CFT requirements to these sectors but that accountants, lawyers, other legal professionals, real estate agents, and company service providers were not subject to the AML/CFT requirements. Trust companies are defined as financial institutions and, depending on their charter, are subject to all or most of the same BSA requirements as other financial institutions under the BSA.

31. **In June 2005, FinCEN issued an interim final rule requiring certain dealers in precious metals, stones, or jewels to establish an AML program.** At the time of the mutual evaluation, there was limited application of AML/CFT requirements for dealers in precious metals, stones, or jewels other than the obligation to establish an AML program (i.e., internal controls and procedures) by January 1, 2006. There were no explicit obligations for CDD measures, record-keeping, and suspicious transaction reporting, although the United States maintains that such measures would be necessary to implement an AML program. FinCEN delegated examination authority for dealers in precious metals, stones, and jewels to the IRS. The evaluators noted that the IRS planned to commence compliance examinations of these sectors by mid-2006. Civil and criminal penalties are available for non-compliance.

32. **Casinos were the only category of DNFBPs that was subject to a range of BSA requirements including suspicious activity and large cash transaction reporting, recordkeeping, and the establishment of AML programs (i.e., internal controls and procedures).** These requirements applied to state-licensed casinos, tribal casinos, state-licensed card clubs, and tribal card clubs. Gaming establishments with gross annual revenue of US$1 million or less do not fall within the BSA definition of "casino" and are, therefore, not subject to these requirements. Internet gaming is prohibited in the United States.

Developments since the 2006 MER

33. **Recommendation 12 was rated as non-compliant with the following three main deficiencies.** These are discussed below along with the follow-up steps taken by the U.S. authorities.

1) **Issue:** Casinos are not required to perform enhanced due diligence for higher-risk categories of customers, nor is there a requirement to undertake CDD when there is a suspicion of ML or TF (Recommendation 5).

Recommendations: Explicitly require casinos to perform enhanced due diligence for higher-risk categories of customers and to undertake CDD when there is a suspicion of money laundering or terrorist financing.

Update: The authorities interpret Question 14 of FinCEN's Guidance to casinos "How comprehensive must a casino's procedures be for detecting suspicious activity?"[28] to mean that:

" [t]he extent and specific parameters under which a casino or card club must monitor customer accounts and transactions for suspicious activity must factor in the type of products and services it offers, the locations it serves, and the nature of its customers."[29]

The authorities also reported that FinCEN is in the process of publishing "suggested best practices" for casinos and card clubs that will provide guidance on risk-based approaches to compliance with the BSA requirements that would address customer risk profile issues.

2) **Issue:** Accountants, dealers in precious metals and stones, lawyers, and real estate agents are not subject to customer identification and record-keeping requirements that meet Recommendations 5 and 10.

Recommendations: Extend customer identification, record-keeping, and account monitoring obligations that are consistent with FATF Recommendations to these sectors as soon as possible.

Update: The authorities did not report any substantive progress with respect to this recommendation. However, they reported the drafting of American Bar Association Good Practices Guidance (ABA Guidance), which largely follows the FATF Guidance, and which is intended to provide practical guidance on implementing a risk-based approach to AML/CFT. The ABA Guidance has not yet been adopted or published, but the authorities anticipate that it will be adopted during the summer of 2010.[30]

---

[28] November 2007 document of Frequently Asked Questions.

[29] FATF Recommendation 5, to which Recommendation 12 refers, establishes an explicit requirement for conducting enhanced CDD for higher-risk customers, transactions, and business relationships. This requirement should be set out in law, regulation, or other enforceable means. CDD is also required whenever there is a suspicion of ML or TF. The latter should be set out in law or regulation.

[30] The proposed guidance would not be classified as "law or regulation," or "other enforceable means" for purposes of the FATF Recommendations.

3) **Issue:** None of the DNFBP sectors is subject to obligations that relate to Recommendations 6, 8, or 11 (except for casinos in relation to Recommendation 11).

Recommendations: Extend obligations that relate to Recommendations 6, 8 and 11 to all DNFBPs. (This does not apply to casinos in relation to Recommendation 11.) No AML/CFT obligations have been imposed on these DNFBPs. In the short term, a proposed final rule should be issued to expedite the introduction of AML obligations for "persons involved in real estate closings and settlements." Prepare an advance notice of proposed rulemaking in the near future in relation to the trust and company services providers (TCSPs) sector to extend both the AML Program and CIP requirements to this sector.

Update: The authorities did not report any progress with respect to these recommendations.

34. **Recommendation 16 was rated as non-compliant with five main deficiencies identified by the evaluators.** These are discussed below along with the follow-up steps taken by the U.S. authorities.

1) **Issue:** Casinos are the only DNFBPs that are required to report suspicious transactions; however, there is a monetary threshold on this obligation.

Recommendations: Remove the monetary threshold on the SAR reporting obligation for casinos and extend the obligation to report suspicious transactions to the other DNFBP sectors.

Update: The authorities did not report any progress with respect to this recommendation.

2) **Issue:** Accountants, lawyers, real estate agents, and TCSPs are not subject to a prohibition on "tipping off" or protected from liability when they choose to file a suspicious transaction report.

Recommendations: Accountants, lawyers, real estate agents, and TCSPs should be made subject to the "tipping off" prohibition and should be protected from liability when they choose to file a suspicious transaction report.

Update: The authorities did not report any progress with respect to this recommendation.

3) **Issue:** Accountants, lawyers, real estate agents, and TCSPs are not required to implement adequate internal controls (i.e., AML programs).

Recommendations: Accountants, lawyers, real estate agents, and TCSPs should also be required to implement adequate internal controls (i.e., AML programs).

Update: The authorities did not report any substantive progress with respect to this recommendation. They state that these DNFBPs conduct their activities through financial institutions and thus are not entirely outside of the AML regime.[31] In addition, the authorities report that consideration is being given to extending coverage of AML requirements to mortgage lenders and originators.[32]

Issue: Dealers in precious metals, precious stones, or jewels are required to implement AML programs; however, the effectiveness of implementation cannot yet be assessed.

Recommendations: Continued work is needed to ensure that dealers in precious metals and stones are aware of their obligations to establish AML programs and are implementing them effectively.

Update: The authorities reported that beginning in 2010, the IRS had begun nation-wide examinations of dealers in precious metals, stones, and jewels. In addition, FinCEN and the IRS are delivering examiner training and conducting outreach to entities subject to AML rules. The authorities also reported that they are providing guidance to IRS examiners on BSA regulations, industry products and practices, conducting examinations, and on how to assess risk. Additionally, the authorities stated that the IRS and FinCEN have collaborative discussions with field examiners, on a quarterly basis, to discuss examination issues. The authorities expect that collaboration between FinCEN and IRS should allow for feedback and assessment of the AML program implementation.

4) **Issue:** There are no specific obligations on accountants, lawyers, real estate agents, or TCSPs to give special attention to the country advisories that FinCEN has issued and which urge enhanced scrutiny of financial transactions with countries that have deficient AML controls.

Recommendations: The authorities should require accountants, lawyers, real estate agents, and TCSPs to give special attention to the country advisories that FinCEN has issued and which urge enhanced scrutiny of financial transactions with countries that have deficient AML controls.

---

[31] FATF Recommendation 14 requires countries to impose direct requirements in this regard on DNFBPs.

[32] This would be more relevant to the FATF Recommendations dealing with the financial sector (lending activities are financial activities under FATF definition of financial institutions) than to real estate agents.

Update: The authorities did not report any progress with respect to this recommendation.

35. **Recommendation 24 was rated as partially compliant with two main deficiencies identified by the evaluators.** These are discussed below along with the follow-up steps taken by the U.S. authorities.

1) **Issue:** There is no regulatory oversight of AML/CFT compliance for accountants, lawyers, real estate agents, or TCSPs.

Recommendations: Accountants, lawyers, real estate agents, and TCSPs should be made subject to AML/CFT obligations and appropriate regulatory oversight. In the case of TCSPs, a registration process should be introduced for agents engaged in the business of providing company formation and related services (perhaps with a *de minimis* threshold to ensure that single-company agents are not required to register).

Update: The authorities did not report any progress with respect to these recommendations.

2) **Issue:** The supervisory regime for Nevada casinos is currently not harmonized with the BSA requirements.

Recommendations: The work to further harmonize Nevada's regulatory requirements with the BSA should continue as rapidly as possible.

Update: The authorities reported that effective July 1, 2007, Nevada casinos with gross annual gaming revenue exceeding US$1 million became subject to the BSA requirements in the same manner as all other casinos.

D. Legal Persons and Arrangements and Non-Profit Organizations

Main findings of the 2006 MER

36. **The evaluators found that U.S. compliance with Recommendations 33 and 34 dealing with the transparency of legal persons and arrangements was very weak and rated both as non-compliant.** They found compliance with the FATF Recommendation SRVIII dealing with non-profit organizations (NPOs) to be strong.

37. **In its March 2010 update report to the Fund, the U.S. authorities provided a number of Senate testimonies that consistently point to the lack of transparency and availability of corporate formation as inhibiting law enforcement efforts.** For example, U.S. Customs and Immigration 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."

Developments since the 2006 MER

38. **The evaluators rated FATF Recommendation 33 as non-compliant with two main deficiencies identified by the evaluators.** These are discussed below along with the follow-up steps taken by the U.S. authorities.

1) **Issue:** While the investigative powers are generally sound and widely used, there are no measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

Recommendations: Undertake a comprehensive review to determine ways in which adequate and accurate information on beneficial ownership may be available on a timely basis to law enforcement authorities for companies which do not offer securities to the public or whose securities are not listed on a recognized U.S. stock exchange. The evaluators noted that it is important that this information be available across all states as uniformly as possible. They further recommended that the federal government seek to work with the states to devise procedures which should be adopted by all individual states to avoid the risk of arbitrage between jurisdictions. The evaluators noted that the January 2006 threat assessment indicates that the U.S. authorities are aware of the problems created by company formation arrangements and that they had formulated a program to try to address the issue. They noted that this should be pursued on a shorter time scale than seems to be envisaged at present. In particular, they also recommended that the proposal to bring company formation agents within the BSA framework and to require them to implement AML Programs and CIP procedures should be taken forward in the very near future.

Update: No substantive results were reported, but the authorities believe that significant efforts have been made to address this key deficiency. The following are some of the main developments reported:

- U.S. Senate hearings and other official reports have been held stressing the ML/TF risks associated with companies formed without adequate documentation on beneficial ownership and control.[33]

[33] E.g., Department of Justice (DOJ) Senate Testimony November 2006; FinCEN Senate Testimony November 2006; DOJ Senate Testimony June 2009; Department of Homeland Security Senate Testimony June 2009; Treasury Senate Testimony November 2009, DOJ Senate Testimony November 2009; and Government Accountability Office report April 2006.

- Legislation (Bill S.569: "Incorporation Transparency and Law Enforcement Assistance Act") has been proposed but not yet enacted. Passage of a final draft is hoped for in 2010.

- U.S. Treasury, the Department of Justice, and the Department of Homeland Security continue to consult with Congress and the private sector to amend the draft Bill S.569. A draft Administration Bill was sent to Congress in April 2010 to, *inter alia*, address the following issues of Bill S.569:

  - Clarify and limit the beneficial ownership definition and information disclosure requirement.

  - Eliminate expansion of AML obligations to company formation agents in favor of broader civil and federal criminal liability for non-compliance.[34]

  - Establish documentation requirements.

  - Establish provisions to address the transfer of ownership of legal entities.

  - Individual states are reported to have begun to seek ways to address the lack of beneficial ownership and control information. As a result of these efforts, Nevada and Wyoming—two states identified in the United States Money Laundering Strategy as having significant vulnerabilities in this area—have modified their State incorporation processes. Both states passed new legislation outlawing bearer shares. Wyoming is also reported to have enhanced the information requirements for registered agents and legal entities.

  - Ongoing efforts to enact uniform corporate laws in all states to address the lack of beneficial ownership and control information. A Uniform Law was adopted in 2009 by the National Conference of Commissioners on Uniform State Laws, but none of the states are reported to have taken steps to enact this law.

2) **Issue:** There are no measures taken by those jurisdictions which permit the issue of bearer shares to ensure that bearer shares are not misused for money laundering.

Recommendations: No recommendations were made for this issue.

Update: All states are now reported to prohibit the issuance of bearer shares.

[34] The FATF definition of "TCSPs" extends full coverage of the standard to "formation agents of legal persons."

39. **Recommendation 34 was rated as non-compliant with one main deficiency identified by the evaluators.** This is noted below along with the follow-up steps taken by the U.S. authorities.

1) **Issue:** While the investigative powers are generally sound and widely used, there is minimal information concerning the beneficial owners of trusts that can be obtained or accessed by the competent authorities in a timely fashion.

Recommendations: Implement measures to ensure that adequate, accurate, and timely information is available to law enforcement authorities concerning the beneficial ownership and control of trusts.

Update: No progress was reported to address the evaluators' recommendation. The authorities state that the underlying issues are closely related to those of Recommendation 33 for legal persons; hence, they plan to address the issue of trust ownership and control after the corporate entity issues are resolved.

In addition, the authorities indicated that as part of the pending legislation to address Recommendation 33, they will conduct a study on trusts and other legal entities not covered by the legislation to identify whether the lack of available beneficial ownership information (for partnerships, trusts, or other legal entities) raises concerns about the involvement of such entities in terrorism, ML, tax evasion, securities fraud, or other misconduct; and whether it has impeded investigations into entities suspected of such misconduct.

E. National and International Cooperation

Main findings of the 2006 MER

40. **Overall, the evaluators concluded that the United States has broad and adequate policy and operational level mechanisms to facilitate interagency cooperation and coordination.** However, they noted that cooperation mechanisms in the law enforcement area appeared to be fragmented. At the operational level, there was overlap between the jurisdictions of the various law enforcement agencies, requiring more refined coordination. The joint task force model seemed to the evaluators to be generally effective, provided that it is appropriately resourced and developed. The authorities have undertaken a number of initiatives to overcome these problems including through significant reorganization efforts. The evaluators noted that it was too early to assess the effectiveness of these measures.

41. **The evaluators also found that the United States routinely engaged in cross-border cooperation on AML/CFT issues and that it could provide extensive mutual legal assistance on the basis of treaties, multilateral conventions, and in response to rogatory letters and requests from ministries of justice.** Most of the bilateral treaties entered into by

the United States do not contain dual criminality requirements, and, where they exist, they mostly relate to requests for assistance requiring compulsory or coercive measures, in line with the standard.

42. **It was noted that the United States had implemented a flexible and efficient system for providing international cooperation in relation to freezing, seizure, and confiscation.** Requests for assistance in tracing and identifying assets did not always require formal proceedings and could be satisfied using less formal mechanisms such as through direct police-to-police communication. The evaluators concluded that the U.S. extradition regime was based on a solid and flexible legal framework that largely relied on bilateral agreements subject to dual criminality. They found that the system was efficient and effective and allowed the United States to extradite its own nationals.

43. **FinCEN, law enforcement agencies, and regulators were allowed to provide their foreign counterparts with a wide range of international cooperation.** Similar mechanisms existed to facilitate international cooperation diagonally (e.g., from Financial Intelligence Unit (FIU) to law enforcement, or from law enforcement to regulators).

Other developments since the 2006 MER[35]

44. **The 2006 MER also made additional recommendations to improve the regime for national and international cooperation with respect to FATF Recommendations that were not rated as non-compliant or partially compliant.** With respect to national cooperation, the United States has provided the following statistics on IRS examination and related national cooperation issues:

- FinCEN has entered into information-sharing MOUs with 42 state MSB regulators. Included in quarterly MOU reports are enforcement actions taken against MSBs.

- FinCEN is reported to be in contact with states, notably Florida, regarding the referral of MSBs with significant BSA violations.

At the federal level, the IRS provides FinCEN with information including with respect to violations and enforcement action. According to FinCEN, the IRS also has information-sharing MOUs with 43 state MSB regulators. FinCEN also has an information sharing MOU with the Puerto Rico Office of the Commissioner of Financial Institutions that regulates Puerto Rican MSBs. The IRS-State MOUs provide that the states will furnish the IRS with

[35] See Table 1.

their MSB BSA reports of examination and that the "IRS may provide FinCEN with access to information received from the State under the terms of this MOU."

45. **The U.S. authorities reported that the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center was recently established to improve intelligence to help target and combat sophisticated international drug trafficking and ML organizations.** The Fusion Center brings together into a common database, unfiltered information for investigation and prosecutorial purposes. The Fusion Center recently entered into a partnership with the International Organized Crime Intelligence and Operations Center which provides a new data source for U.S. law enforcement.

46. **The United States also informed that in March 2009, it received an adverse decision in the United States District Court for the District of Columbia case *In re any and all funds or other assets in Brown Brothers Harriman & Co. Account #8870792 in the name of Tiger Eye Investments Ltd., et al.*** The court held that the U.S. international confiscation assistance statute does not permit a U.S. court to issue an order for the pre-trial restraint of property that is not yet subject to a foreign confiscation judgment, and that a U.S. court can only restrain property already ordered confiscated by the foreign country. The court decision has been appealed. According to the authorities, although this case is a legally binding precedent for only one of the U.S. federal district courts, it is nevertheless a noteworthy development.

47. **The update provided by the U.S. authorities also states that it has entered into Mutual Legal Assistance Treaties (MLATs), Instruments, or Protocols with 80 countries or multilateral organizations, up from 50 in July 2005.** Recently, the United States and the European Union completed 27 new MLATs, Instruments, or Protocols which substantially assist the authorities in addressing TF and ML matters. These agreements disallow bank secrecy as the basis for the denial of mutual legal assistance (MLA) requests and allow easier access to bank and other financial information to assist designated law enforcement agencies in TF and ML cases. Currently, only a few U.S. MLATs require dual criminality and most allow for broad cooperation on offenses that are criminalized in the requesting country.

48. **The United States informs that it has bilateral extradition treaties with 133 countries, and that many of them were recently updated to provide for dual criminality for extradition purposes.** As of February 1, 2010, the 27 new Extradition Treaties, Instruments, or Protocols are reported to have come into effect between the United States and European Union countries that provide for dual criminality and cover ML and TF as extraditable offenses. Since the 2006 MER, updated extradition treaties or protocol are reported to have come into effect with the United Kingdom and Israel, both in 2007 that *inter alia*, allow for less cumbersome documentation requirements.

49. **The U.S. authorities have clarified that where older list treaties are in effect, they are often supplemented by various multilateral conventions, such as the United Nations Convention for the Suppression of the Financing of Terrorism, the Transnational Organized Crime Convention (which came into effect in July 2005), and the United Nations Convention Against Corruption (of which the United States became a party in 2006).** It states that such conventions expand the list of extraditable offenses existing in the older bilateral treaties to cover all of the offenses set forth in the multilateral conventions. With regards to "ad hoc and unilateral" extradition according to the principles of the Terrorist Financing Convention, the United States presumes that it refers to extradition in the absence of a bilateral extradition treaty. It notes that under Article 11(2) of the Convention, a State Party "may, at its option" allow for extradition under the Convention, if its domestic law allows for such extraditions. In most cases, it is stated that the law requires that there be a bilateral treaty to effect extradition, but the United States maintains that under Article 11(1) the offenses covered under the Terrorist Financing Convention are additional extraditable offenses under the older, list-based extradition treaties.

F. Resources and Statistics

Main findings of the 2006 MER

50. **The evaluators concluded that, overall, the authorities were well-equipped, staffed, resourced, and trained.** They noted concerns about the adequacy of resources within the IRS to undertake examinations of the very large number of institutions for which it is responsible, namely: MSBs; insurance companies; non-federally regulated credit unions; credit card operators; casinos and card clubs; and dealers in precious metals and stones. There are approximately 206,081 entities under the IRS's supervisory jurisdiction. The evaluators highlighted the need to significantly increase the resources of the IRS to enable it to properly discharge its oversight responsibilities for these sectors, particularly for the supervision of MSBs.

Developments since the 2006 MER[36]

51. **The 2006 MER also made additional recommendations to strengthen resources and statistics with respect to those FATF Recommendations that were not rated as non-compliant or partially compliant.** In response, the authorities have provided information on, *inter alia*, improved resources for the IRS to conduct examinations of MSBs (See Section B: Preventive Measures—Financial Institutions).

---

[36] See Table 1.

52. **The Department of Justice has also informed that its new Consolidated Assets Tracking System now allows authorities to track the statutory basis for any seizures and/or forfeitures, so that any seizure or forfeiture under the terrorism forfeiture law can be identified as a separate category.**

Table 1. Other FATF Recommended Action Plan Items to Improve the AML/CFT System (2006) for Recommendations that were NOT rated as Partially Compliant (PC) or Non-Compliant (NC)

FATF Recommendations	Evaluators' Recommendations
	Legal System and Related Institutional Measures
1. Criminalization of money laundering 2. Criminal intent and criminal liability of legal persons 3. Provisional measures and confiscation 26 Financial Intelligence Unit SR III Freezing and confiscating terrorist assets SR IX Cross-border movement of monetary instruments	(i) expand the list of domestic and foreign predicate offenses for money laundering; (ii) revise the system used to list Taliban-related names; (iii) enhance the "equivalent value" confiscation regime; (iv) broaden the definition of "transaction" to cover all conduct consistent with the Vienna and Palermo Conventions; and (v) In addition, the evaluators recommended strengthening Financial Crimes Enforcement Network's (FinCEN) analytical outputs and continuing efforts to increase the quality of suspicious activity reports (SARs) received from all sectors. It was also recommended that FinCEN adhere to the principles governing international information exchange in terrorism-related requests for assistance from foreign financial institutions (FIs).
	Preventive Measures—Financial Institutions
6. Politically-Exposed Persons (PEPs) 7. Correspondent banking 8. Non-face-to-face transactions and new	(i) introduce an explicit requirement that the opening of individual correspondent accounts should involve senior management approval; (ii) extend the PEPs requirements to investment advisers and commodity trading advisors;

technologies) 9. Reliance on third parties 10. Record keeping SRVII Wire transfers 11. Attention to complex and unusual transactions 21. Special attention to transactions from certain countries 13. Suspicious transaction reporting 15. Internal controls 22. Foreign branches and subsidiaries 18. Shell banks 23. Regulation and supervision of FIs 29. Supervisory powers 17. Sanctions 25. Guidance and feedback SRVI Alternative remittance systems	(iii) introduce a requirement that the relying financial institution should obtain immediately from the introducing institution customer identification details; (iv) comply with the Financial Action Task Force (FATF) batch wire transfer requirements including reducing the *de minimus* threshold to US$ 1,000; (v) extend full recordkeeping requirements to the insurance sector; (vi) require/extend recording requirements to the insurance and securities sectors with respect to transactions with persons from/in countries that do not or insufficiently apply the FATF Recommendations; (vii) remove the SAR reporting threshold and extend the SAR obligations to investment advisers, commodity trading advisors and insurance intermediaries; (viii) extend the AML program requirement to the limited number of exempted non-federally regulated depository institutions and to unregistered investment companies, investment advisers and commodity trading advisors; (ix) ensure that insurance companies apply anti-money laundering/combating the financing of terrorism (AML/CFT) measures to their foreign branches and subsidiaries; (x) require all financial institutions to screen prospective employees for high standards; (xi) enhance supervision and enforcement for AML/CFT compliance in the credit union, insurance and securities sectors; and

	(xii) enhance supervisory capacity for the Internal Revenue Service (IRS) with respect to the large number of institutions for which it is responsible including and especially the money services businesses (MSB) sector.
	National and International Cooperation
31. Domestic cooperation 35–40. International cooperation, mutual legal assistance, provision of mutual legal assistance without dual criminality, freezing seizing confiscating at foreign request and asset sharing, extradition, and international cooperation and exchange of information SR I Ratification and implementation of UN instruments SRV International cooperation	(i) close the remaining gap between the policy level and the operational law enforcement work; (ii) implement more refined law enforcement coordination at the operational level; (iii) review the money-laundering (ML) offenses to ensure all conduct required to be criminalized by the Vienna and Palermo Conventions is covered; (iv) include "participation in an organized criminal group" as a foreign predicate offense as required by Article 6(2)(c) of the Palermo Convention; (v) transpose all United Nations (UN) Security Council Resolution 1267(1999) designations in the Office of Foreign Assets Control (OFAC) list; (vi) provide a formal legal basis to allow for equivalent value seizure upon a foreign request; (vii) extend the list of domestic and foreign predicate offenses to all 20 designated categories; (viii) review older list-based extradition treaties to ensure that they do not pose an obstacle to extradition; and (ix) allow extradition according to the principles of the UN Terrorism Finance

	(TF) Convention on an ad hoc and unilateral basis.
	Resources and Statistics
30. Resources 32. Statistics	(i) ensure that the IRS is adequately resourced to effectively supervise all of the entities for which it is responsible; (ii) ensure that all of the statistics required under FATF Recommendation 32 are collected and maintained; (iii) include confiscation as part of the terrorism- and FT-related statistics to be held; and (iv) maintain more comprehensive statistics for supervisory actions especially in the MSB sector.