FATF

Anti-money laundering and counter-terrorist financing measures

United States

7th Follow-Up Report & Technical Compliance Re-Rating

March 2024

Follow-up report

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CTF) standard.

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United States: 7th Enhanced Follow-up Report

Introduction

The FATF Plenary adopted the mutual evaluation report (MER) of the United States in October 2016[1]. Based on the MER results, the United States was placed into enhanced follow-up. This is the United States' 7th Enhanced Follow-up Report (FUR) with technical compliance re-ratings. This FUR analyses the United States' progress in addressing some of the technical compliance deficiencies identified in its MER. Re-ratings are given where progress has been made.

Overall, the expectation is that countries will have addressed most, if not all, technical compliance deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress the United States has made to improve its effectiveness.

Mr. Ian McDonald, Senior Policy Analyst, Serious and Organized Crime, Federal Policing Strategic Direction, Royal Mounted Police of Canada conducted the analysis of this re-rating request, supported by Ms. Diana Firth, Policy Analyst from the FATF Secretariat.

The second part of this report summarises the United States' progress in improving technical compliance while the third part sets out the conclusion and includes a table showing the United States' MER ratings and updated ratings based on this follow-up report.

Progress to improve Technical Compliance

This section summarises the United States' progress to improve its technical compliance by addressing some of the technical compliance deficiencies identified in the MER regarding R.24.

Progress to address technical compliance deficiencies identified in the MER

The United States has made progress to address the technical compliance deficiencies identified in the MER in relation to Recommendation 24. Because of this progress, the United States has been re-rated on this Recommendation.

[1] www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-united-states-2016.html

Recommendation 24

	Year	Rating
MER	**2016**	NC
FUR1	**2018**	NC (not re-assessed)
FUR2	**2019**	NC (not re-assessed)
FUR3	**2020**	NC (not re-assessed)
FUR4	**2021**	NC (not re-assessed)
FUR5	**2022**	NC (not re-assessed)
FUR6	**2023**	NC (not re-assessed)
FUR7	**2024**	**LC**

(a) **Criterion 24.1** (*Met)* **(a) - (b)** As set out in 2016, the formation of U.S. legal entities or legal persons is governed by State law. Each of the 56 States, territories and the District of Columbia have its own laws for the formation and governance of legal entities. Federal law also applies to them, once formed, in certain areas (e.g., criminal law, securities regulation, taxation). Information about the types and basic features, as well as the process for creation, and for recording and obtaining information about legal entities, is publicly available on the relevant website of each State. Generally, the types of legal entities that are formed in the U.S. are the corporation, the limited liability company (LLC), the limited partnership (LP), the limited liability partnership (LLP) and the limited liability limited partnership (LLLP). Corporations and LLCs are the most common, at well over 95% of all legal entities.

(b) **Criterion 24.2** (*Met)* As set out in 2016, the U.S. assesses the ML/TF vulnerabilities of all types of legal persons and associated risks based on law enforcement experience and investigations. One of the typical money laundering (ML) methods includes creating legal entities without accurate information being available to authorities about the identity of BO as noted in the U.S. 2018, and 2022 National Risk Assessments on Money Laundering (NMLRA), and the 2020 Illicit Finance Strategy (IFS) (NMLRA update included in the IFS with a BO section) and 2022 IFS. [2]

The United States' 2022 NMLRA, Terrorist Financing (NTFRA) and Proliferation Financing (NPFRA) risk assessments highlight the most significant illicit finance threats, vulnerabilities, and risks facing the United States. Regarding ML risks associated with legal persons, in the NMLRA, the U.S. identified it continues to face both persistent and emerging ML risks related to the misuse of legal entities to hide funds from a range of crimes and the lack of transparency in certain real estate transactions. The NTFRA identified instances of shell and front companies being used by actors such as ISIS and Hezbollah to move funds. The NPFRA found that PF networks rely on the use of front and shell companies to access correspondent banking relationships.

[2] All NRAs are available online at https://home.treasury.gov/about/offices/terrorism-and-financial-intelligence/terrorist-financing-and-financial-crimes/office-of-strategic-policy-osp.

(c) **Criterion 24.3** (*Mostly Met)* The 2016 MER noted that the requirements for creating a corporation and limited liability companies (LLC) vary from State to State and that although basic information of all companies created in the country was generally publicly available (in some cases upon payment of a fee) in line with R.24, not all States required all of the information described in criterion 24.3. As noted in the 2016 MER, for corporations, every State requires the issuance, upon application, of a corporate governance document ("articles of incorporation," "certificate of incorporation," or "charter") usually by the Secretary of State. This contains the corporation's name, constitutes proof of its incorporation, form and existence, address of its registered office, and number and class of shares. For LLCs, although requirements vary across states, the process is similar. A limited partnership (LP) can also be formed by filing a Certificate of Limited Partnership (or similar document) with the State company registry.

Information on or a requirement to have a list of directors or principal officers was not available in five of the 50 states. Only one of these five states where corporate director information was not regularly disclosed is among the top 10 company formation centres within the U.S., and accordingly, this deficiency was not weighted heavily, as at the time of the MER.

The Corporate Transparency Act (CTA) was enacted to address deficiencies relating to beneficial ownership information transparency in the United States. Specifically, the CTA requires certain[3] U.S. and foreign companies (referred to as "reporting companies") to disclose their beneficial owners and other information, to the U.S. Treasury's Financial Crime Enforcement Network (FinCEN), the U.S.'s Financial Intelligence Unit, and to correct/update that information promptly when necessary.

While the focus of the CTA framework is beneficial ownership information, the final Beneficial Ownership Information (BOI) Reporting Rule, which implements the requirements of the CTA, requires companies to provide the following basic information about themselves in the process: full legal name, any trade or 'doing business as' name; a complete current address; proof of incorporation via the reporting of the U.S. State or Tribal or foreign jurisdiction of formation (if foreign, the BOI Reporting Rule requires providing the U.S. State, Tribal or foreign jurisdiction of formation where the company first registered) and the Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (Or if foreign, a tax payer identification number issued by a foreign jurisdiction and the name of such jurisdiction) (31 CFR 1010.380 (b)(1) (i)).

[3] The final BOI Reporting Rule identifies two types of reporting companies: domestic and foreign. A domestic reporting company is a corporation, limited liability company (LLC), or any entity created by the filing of a document with a Secretary of State or any similar office under the law of a State or Indian Tribe. A foreign reporting company is a corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in any State or Tribal jurisdiction by the filing of a document with a secretary of state or any similar office (31 CFR 1010.380 (c)(1)). FinCEN expects that these definitions mean that reporting companies will include (subject to the applicability of specific exemptions) limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs, because such entities are generally created by a filing with a Secretary of State or similar office.

With respect to beneficial ownership information required under the CTA (to be discussed further under criteria 24.6 through 24.9 below), the final BOI Reporting Rule requires reporting companies to disclose their beneficial owners' legal name, date of birth, address, unique identifying number (and the issuing jurisdiction), and an image of the document from which the unique identifying number is obtained (31 CFR 1010.380(c)(1)(i); 31 CFR 1010.380(b)(1)(ii)). The CTA directs the Secretary of the Treasury to maintain information received from reporting companies "in a secure, non-public database, using information security methods and techniques that are appropriate to protect non-classified information security systems at the highest security level" (CTA, s. 6402(7)). The broad definition of beneficial owner under the CTA framework will necessarily result in reporting of information on most, if not all, directors because beneficial owners are defined as "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise- (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity" (31 U.S.C 5336(a)(11)(A); 31 U.S.C. 5336 (b)(1)(A); 31 U.S.C. 5336(b)(2)(A)); 31 U.S.C. 5336(a)(3)(A)). The BOI Reporting Rule, which implements the requirements of the CTA, defines the term 'substantial control' as including among others, individuals who serve "as a senior officer of the reporting company" and who have "authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)"(87 Federal Register (FR) 5498 (Sept. 30, 2022); 31 CFR 1010.380(d)(1)(i)(A)-(B)). The final BOI Reporting Rule defines senior officer as "any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of the official title, who performs a similar function (31 CFR 1010.380(f) (8)).

The reporting requirements under the final BOI Reporting Rule further closed the gap in 24.3 significantly because they established a standard set of some of the basic information required by c.24.3, which reporting companies need to report to FinCEN. This did not exist at the time of the MER. It is also a significant development from the MER because it sets a clear federal standard for transparency and disclosure that is applicable to all reporting companies as part of the intended purpose of the CTA. The CTA also explicitly requires the U.S Treasury to, to the greatest extent practicable, establish partnerships with State, local and Tribal authorities to implement the BOI requirements (31 U.S.C. 5336(f)).

(d) **Criterion 24.4** (*Mostly Met)* As set out in 2016, most States require corporations to maintain the basic information discussed under c.24.3 either at their principal office or at an unspecified location. All States also require corporations to maintain a record of their registered shareholders, including names and addresses, and the number and class of shares held by each. The MER noted that most of the States did not require this information to be maintained in the U.S. (and this is a requirement of c.24.4; see 24.4 in the U.S. MER). This gap has been largely addressed considering the CTA imposes reporting obligations on domestic and foreign entities that are within the scope of the definition of "reporting company" and that do not fall within one of the categories of exemptions mentioned under 24.6 (See 24.6 and 31 USC. 5336(a)(11)). These obligations, as noted in criterion 24.3, include the

reporting of some basic information about reporting companies that will necessarily result in the reporting of information on most, if not all, directors under the broad definition of beneficial owner. Under the CTA, "reporting companies" are required to have filed a document with the secretary of state or any similar office under the law of a State or Indian Tribe. Given this nexus to a secretary of state or similar office filing under the CTA framework, coupled with existing state requirements regarding the provision of basic information, it is reasonable to assume that reporting companies would maintain files and records within the U.S in the ordinary course of business. Moreover, as noted under criterion 24.3, the CTA directs the Secretary of the Treasury to maintain information received from reporting entities "in a secure, non-public database, using information security methods and techniques that are appropriate to protect non-classified information security systems at the highest security level" (CTA, s.6402(7)) and in practice would mean the information would be kept in the U.S.[4]

In addition, footnote 72 of the FATF Methodology notes that in cases in which the company or company registry holds beneficial ownership information within the country (as it would be the case in the U.S., considering the above), the register of shareholders and members need not be in the country, if the company can provide this information promptly on request, and with the CTA and BOI reporting rule, information should be promptly available from FinCEN in more cases than at the time of the MER.

(e) **Criterion 24.5** *(Mostly Met)* In 2016, the U.S. did not have mechanisms to ensure the information referred to in criteria 24.3 and 24.4, though available (See 2016 MER, c.24.5, founding documents were noted as available), was also accurate and updated on a timely basis, in line with 24.5. In addition, there was no requirement to update any changes to the list of directors/managers (other than through periodic reporting requirements-annual or biennial) in the company registry.

The U.S. has since implemented the CTA/BOI reporting rule which also provides for the disclosure and regular update (and sanction if failure to update) of certain basic information: company name, complete current address, and the proof of incorporation via reporting the State, Tribal, or foreign jurisdiction of the formation of the reporting company.

The definition of "substantial control" in the BOI Reporting Rule is broad in scope, and includes, among other things, those who exercise direct or indirect control through board representation, and those with the "authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)", that most if not all directors will necessarily fall within its scope.

[4] The U.S. approved its final BOI Access Rule on 22 December 2023(88 Federal Register 88732) (Dec. 22, 2023). This regulation came into force and effect on 20 February 2024 and could therefore not be considered in this follow-up report. However, such BOI Access Rule clarifies that FinCEN fulfils the CTA requirement of a 'High' standard by adhering to the U.S. Federal Information Security Management Act. In practice, the U.S. explained this means that FinCEN's Beneficial Ownership IT system, which went live on 1 January 2024, maintains all information received from reporting companies in the United States.

In addition, the CTA/BOI reporting rule requires FinCEN to ensure that the reported information is "accurate, complete, and highly useful" (31 U.S.C. 5336(b)(4)(B)(ii)). This would include information about any individual who qualifies as a beneficial owner because they serve as a senior officer of a reporting company or as an individual who "has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)" (31 CFR 1010.380(d)(1)(i)(A-B)). Specifically, the BOI Reporting Rule requires that if there is any change with respect to required information previously submitted to FinCEN concerning a reporting company (which also includes certain basic information) or its beneficial owners, the reporting company must file an updated report within 30 calendar days after the date on which such change occurs (31 CFR 1010.380(a)(2)(i)). Similarly, any corrections to BOI reports must be submitted within 30 calendar days after the date on which a reporting company becomes aware or has reason to know of an inaccuracy (31 CFR 1010.380(a)(3)). In addition, the BOI Reporting Rule requires that each reporting company certify that its BOI report is true, correct, and complete (31 CFR 1010.380(b)). This along with reporting timelines and the civil and criminal penalties available for willful violations of reporting requirements should ensure the information is accurate and updated on a timely basis.

(f) **Criterion 24.6 (a) – (c)** *(Mostly Met)* The 2016 MER noted that the U.S. did not have mechanisms to ensure that BO information was obtained by companies and available at a specific location in the U.S., or that it could otherwise be determined by a competent authority, with few exceptions (e.g., issuers of securities and information obtained from the Internal Revenue Service (IRS), to some extent; see 2016 MER, c.24.6). The U.S. has now two distinct mechanisms to ensure BOI can be determined in a timely manner by a competent authority: (1) through FIs under the CDD rule (in line with R.24 which refers to countries using this as the "one or more mechanisms" to obtain BO information) and (2) through the CTA.

Regarding access through FIs under the CDD Rule, the U.S. approved a set of rules under the BSA (31 CFR 1010.230; the "CDD rule") after its 2016 MER, which require covered FIs to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners (both based on ownership and control) of legal entity customers and to include such procedures in their Anti-Money laundering (AML) compliance program (See U.S. 3rd enhanced, 2020 follow-up report, R.10).

Under the CDD Rule, as of May 2018, covered FIs are required to collect BOI for legal entity customers at the time a new account is opened (81 FR 29397 (May 11, 2016); 31 CFR 1010.230). The CDD Rule defines beneficial owner as "(1) each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and (2) [a] single individual with significant responsibility to control, manage, or direct a legal entity customer, including: (i) [a]n executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or (ii) [a]ny other individual who regularly performs similar functions" (31 CFR 1010.230(d)(1)-(2)). The CDD Rule also requires that covered FIs

monitor and, on a risk-basis, update customer information, including BOI, to ensure it is up-to-date and accurate (see, e.g., 31 CFR 1010.230(b)(2) (generally); 1020.210(a)(2)(v)(B) (for banks); 1020.210(b)(2)(v)(B) (for banks lacking a Federal functional regulator including, but not limited to, private banks, non-federally insured credit unions, and certain trust companies); 1023.210(b)(5)(ii) (for brokers or dealers in securities), 1024.210 (b)(5)(ii) (for mutual funds), and 1026.210(b)(5)(ii) (for futures commission merchants and introducing brokers in commodities)).

The CDD rule nevertheless presents some room for abuse as it allows for addresses to include the residential or business street address of next of kin or of another contact individual, though only if a residential or business street address is not available.[5]

The CTA definition of beneficial owner aligns with the FATF definition, as it refers to "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i)exercises substantial control over the entity; or (ii)owns or controls not less than 25 percent of the ownership interests of the entity" (31 U.S.C. 5336(a)(11)(A); 31 U.S.C. 5336(b)(1)(A); 31 U.S.C. 5336(b)(2)(A)); 31 U.S.C. 5336(a)(3)(A)). As discussed in criterion 24.3 above, the BOI Reporting Rule, which implements the reporting requirements of the CTA, defines the term 'substantial control' as including, among others, individuals who serve "as a senior officer of the reporting company" and who have "authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)" (87 Federal Register (FR) 59498 (Sept. 30, 2022); 31 CFR 1010.380(d)(1)(i)(A-B)). The BOI Reporting Rule defines senior officer as "any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function" (31 CFR 1010.380(f)(8)).)

The BOI Reporting Rule also requires updates and corrections to the BOI report within 30 calendar days after the date on which a change occurs (31 CFR 1010.380(a)(2)) or on which a reporting company becomes aware or has reason to know of an inaccuracy (31 CFR 1010.380(a)(3)). These reporting deadlines and updates and corrections, directly contribute to competent authorities' timely access to BO information. These mechanisms also address deficiencies such as information being accessible to law enforcement agents only through a court order. Although the MER notes it is not difficult to obtain information through a court order and this does not represent a deficiency.[6]

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5 This may be considered a minor deficiency, as the use of such an address would be a red flag.

6 In addition, although this cannot considered for the purpose of this re-rating, based on the timing of this update, under the final BOI Access Rule, finalised 22 December 2023 and effective 20 February 2024 (88 Federal Register 88732 (Dec. 22, 2023), U.S. Federal agencies engaged in national security, intelligence and law enforcement activity; State local and Tribal law enforcement agencies, as well as Treasury personnel will be able to access and query the BO IT system directly by using multiple search fields with results returned immediately.

As explained above, regarding the deficiency of not having information in the country, it is not a requirement for information to be kept in the U.S., if it can be determined or obtained in a timely manner, which is the case now.

The CTA exempts from the definition of reporting company twenty-three specific types of entities, under very limited circumstances and conditions specified by the CTA, primarily for two reasons: (i) because they are entities already subject to substantial federal and/or state regulation where beneficial ownership information is provided upon registration and updated when appropriate (including fit and proper requirements, or in the course of supervision such as that applied to financial institutions), or; (ii) they are legal entities that generally do not have ownership structures that include beneficial owners such as public utilities, financial market utilities or certain types of tax exempt entities. Certain exempt entities that are not in (i) or (ii) are subject to the CDD Rule and provide beneficial ownership information to covered financial institutions as per the CDD rule (which is a complementary mechanism to help obtain BO information in line with c.24.6 and 24.8).The above gap and exemptions are given less weight overall because:

1. The BOI reporting rule was introduced as an additional mechanism to existing state level requirements that considers the risk and context of the US economy and other measures in place for those companies. The CTA requires continuous review of exemptions and notes that *"On and after the effective date of the regulations promulgated under subsection (b)(4), if the Secretary of the Treasury makes a determination, which may be based on information contained in the report required under section 6502(c) of the Anti-Money Laundering Act of 2020 or on any other information available to the Secretary, that an entity or class of entities described in subsection (a)(11)(B) (exempted entities) has been involved in significant abuse relating to money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or any other financial crime, not later than 90 days after the date on which the Secretary makes the determination, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that explains the reasons for the determination and any administrative or legislative recommendations to prevent such abuse" (31 U.S.C 5336 (i))*
2. MSBs although exempted from CTA/BOI requirements, are subject to strong licensing and regulatory oversight, at a federal level, by FinCEN, in addition to stringent checks and controls at a state level. Specifically, at the federal level, in registering with FinCEN, an MSB must disclose its full legal name volume and information regarding ownership and control (31 CFR 1022.380) (b) (2) and (4). It must also retain supporting information, including the name and address of its directors, and disclose the U.S. location of where this information is retained. At the state level, state level regulators subject MSB applicants to a rigorous application process as drawn from examples provided by the U.S. Applicants looking to obtain an MSB license must submit detailed information on their formation, ownership, products, and services on offer, and organizational structure.

3. Regarding the exemption for dormant/inactive companies, this exemption only applies to entities that were in existence on or before January 1, 2020, and to those that have not engaged in active business and have not experienced any change in ownership in the preceding twelve-month period.

4. Information from financial institutions would be available among others through Section 314 requests which, as explained in the 2016 MER, are USA PATRIOT Act requests that enable Federal, State, local and foreign LEAs, through FinCEN, to reach out to over 43,000 points of contact at over 22,000 FIs to locate accounts/transactions of persons that may be "engaged in or reasonably suspected, based on credible evidence, to engage in terrorist acts or money laundering activities, with respect to a particular criminal investigation".

(g) **Criterion 24.7** *(Mostly Met)* The 2016 MER noted that any changes in a ***responsible party*** (a term not consistent with the FATF definition of beneficial owner) as provided to the IRS need to be updated within 60 days. Other than for companies registered with the Securities Exchange Commission, there were no separate requirements for companies or registries to obtain and keep accurate and updated BOI and hence no requirement that BOI was accurate and as up to date as possible. The combination of the CDD Rule 31 CFR 1010.230 and the BOI Reporting Rule 31 CFR 1010.380 created a comprehensive regime to obtain and verify beneficial ownership information. Both rules provide an updated definition of beneficial owner that is consistent with the FATF definition. There is a minor deficiency in the CDD Rule, in that covered FIs need not update BOI on a periodic basis, rather, they are to monitor and update customer information on the basis of identified risks, where it would be preferable to include both periodic and risk-based updates to avoid asymmetries with the BOI Reporting Rule, which requires reporting changes to FinCEN within 30 calendar days of changes occurring. This minor deficiency is somewhat mitigated by the fact that FinCEN can use the information it has on the company to investigate discrepancies in between information reported to FinCEN and FIs. As currently noted under c.24.5, the final BOI Reporting Rule requires that each reporting company certifies that its beneficial ownership information is true, correct, and complete. With this certification requirement, reporting companies (and individual reporting on behalf of companies) would be required to take care of verifying information they receive from their beneficial owners and company applicants before reporting it to FinCEN. This, along with civil and criminal penalties available for wilful violations of the reporting requirements should ensure the information is as accurate and up to date as possible but since these provisions only apply to 'reporting companies' as defined by the CTA (even if defined broadly), the deficiencies are not fully addressed.

(h) **Criterion 24.8 (a) – (c)** *(Met)* The 2016 MER noted there was no explicit obligation to ensure that all basic and BO information was available to competent authorities; that State requirements created an obligation to maintain a registered office and registered agent at that office, but registered agents were not required to maintain basic or BO information (although some

States required them to maintain names and addresses of directors officers, LLC managers, etc.) (See 2016 MER, c.24.8).

Criterion 24.8 describes three types of action a country can take to ensure companies cooperate with competent authorities in determining the beneficial owner ((a), and/or, (b), and/or (c). As described in the analysis for c.24.6 and 24.7 above, the CDD Rule and BOI Reporting Rule provide a comprehensive BOI reporting mechanism (consistent with 24.8 (c)), with an updated definition of beneficial owner that is aligned with the FATF definition and was designed to support law enforcement investigations.

(i) **Criterion 24.9** *(Mostly Met*) The 2016 MER indicated that States retain the information regarding legal entities indefinitely; that the IRS maintains information collected in the employer identification number (EIN) process indefinitely, in electronic form and taxpayers are generally required to maintain books and records for tax administration purposes (for at least 3 years form the date return is due or filed). There was no other explicit requirement for companies to maintain information and records for five years after dissolution. In addition, the CTA and the BOI Reporting Rule, require FinCEN to maintain BOI submitted by reporting companies for not fewer than five years after the date on which the reporting company terminates (31 USC 5336(c)(1)).

The CDD Rule requires that covered FIs establish procedures for making and keeping a record of all information obtained under the procedures implementing the beneficial ownership identification and verification requirements of the CDD Rule. Under the rule, records must include at a minimum any identifying information obtained by the covered to the rule, including without limitation, a certification (if obtained); and for verification, a description of any document relied on (noting the type, any identification number, place of issuance and, if any, date of issuance and expiration), of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy. Covered FIs must retain the records relating to identification for five years after the date the account is closed, and the records made relating to verification for five years after the record is made (31 CFR 1010.230(i)).

While the CDD and BOI Reporting Rules respectively require covered FIs and FinCEN to maintain the information and records described therein for a period of not less than five years, there is no explicit obligation for companies or legal entities to maintain information, which could lead to an asymmetry in information.

Therefore, while access to and requirements to maintain information for a period have improved, the deficiency is not fully addressed.

(j) **Criterion 24.10** (*Met*) In addition to the powers that competent authorities, and in particular, law enforcement authorities had since 2016 (as described in the 2016 U.S. MER, where these requirements were already considered as addressed), the CTA authorizes FinCEN to disclose BO information (BOI) reported by reporting companies to five general categories of recipients: (1) U.S. Federal, State, local, and Tribal government agencies requesting BOI for specified purposes; (2) foreign law enforcement agencies, judges,

prosecutors, central authorities, and competent authorities (foreign requesters); (3) financial institutions (FIs) using BOI to facilitate compliance with customer due diligence (CDD) requirements under applicable law; (4) Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing FIs for compliance with CDD requirements; and (5) the U.S. Department of the Treasury (Treasury) itself, including for tax administration purposes (31 U.S.C. 5336(c)(2)(B) and 31 U.S.C. 5336(c)(5)).

(k) **Criterion 24.11 (a) – (e)** *(Not Applicable)* As in 2016, all States prohibit the issuance of bearer shares or similar instruments, hence this criterion remains not applicable. In addition, the CTA prohibits a corporation, limited liability company, or other similar entity formed under the laws of a U.S. State or Indian Tribe from issuing a certificate in bearer form evidencing either a whole or fractional interest in the entity (31 U.S.C. 5336(f)).

(l) **Criterion 24.12 (a) – (c)** *(Mostly Met)* The 2016 MER noted that while State law generally requires that the business and affairs of a corporation be managed by or under the direction of the directors, this did not preclude the possibility of them acting as nominees. It also clarified that no state expressly permitted corporations to use nominee directors but that there was no express bar against them, and that there were no licensing requirements for nominee directors/nominee shareholders or requirements for them to disclose the identity of nominator. The CTA largely addressed these issues by requesting certain companies to report identifying information of the "true" beneficial owner to FinCEN, which expressly excludes nominees in the definition of beneficial owner, to prevent their misuse. This provision is in the CTA and BOI Reporting Rule (31 USC 5336(a)(3)(b)(ii) & 31 CFR 1010.380(d)(3)(ii)). The BOI Reporting Rule further clarifies in its preamble that the obligation of a reporting company is to report identifying information of the *individual* on whose behalf a nominee, intermediary, custodian, or agent is acting (87 FR 59498 (Sept. 30, 2022), Section III.C.iii.b), de facto not allowing for nominees. However, because this provision only applies to 'reporting companies' as defined by the CTA, deficiencies are not fully addressed.

(m) **Criterion 24.13** *(Met)* The 2016 MER noted that sanctions in place for failure to comply with reporting requirements were not proportionate and dissuasive and were not always applicable. For example, failure to obtain an IRS EIN would result in non-compliance with tax filing requirements, and civil and criminal penalties, provided that the legal person is conducting activity which requires an EIN. However, not all legal entities were required to obtain an EIN, and there were no penalties for not updating 'responsible party' information (See 2016 MER, c.24.13).

The CTA now specifies that "it shall be unlawful for any person to—(A) willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with [BOI Reporting Requirements]; or (B) willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with [BOI Reporting Requirements]" (31 USC. 5336(h)(1)). Sanctions include a penalty of not more

than USD 500 for each day that the violation continues or has not been remedied; and (ii) may be subject to criminal fines of not more than USD 10 000, imprisoned for not more than 2 years, or both" (31 USC. 5336(h)(3)(A)). These sanctions are applicable to any information provided to FinCEN under the final BOI Reporting Rule, including basic information about the reporting company. Sanctions mentioned in the MER remain alongside these (e.g., failure to file an annual report to State authorities may lead to dissolution of the company: Model Business Corporation Act (MBCA) provisions 14.21). Penalties significantly increased compared to those in the MER and can be considered high enough to be dissuasive, especially with a daily increase in penalty for continued violations. In comparison with other states' penalties for the same actions, penalties are deemed to be proportionate.

(n) **Criterion 24.14 (a) – (c)** *(Mostly Met)* As in 2016, when this criterion had already been largely addressed, competent authorities, including the Department of Justice Office of International Affairs (OIA), provide international cooperation, including investigative support to identify and share, as appropriate, basic and BO information (See 2016 MER, c.24.14). The 2016 MER noted that basic and BO information was not always provided rapidly, and that the information required may not have always been available. The centralization of BOI within FinCEN enhances the flow of information, especially with respect to avenues of informal cooperation, including via FinCEN's own access to information as a competent authority in a centralized searchable database.

(o) **Criterion 24.15** *(Met)* As in 2016, the Department of Justice (DOJ) Office of International Affairs (OIA) makes and responds to requests for BOI related assistance involving other countries and monitors quality of assistance received.

The CTA authorizes FinCEN to disclose BOI reported by reporting companies to foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities ("foreign requesters"), provided their requests come through an intermediary Federal agency, meet certain additional criteria, and are made either (1) under an international treaty, agreement, or convention, or (2) via a request made by law enforcement, judicial, or prosecutorial authorities in a trusted foreign country (when no international treaty, agreement, or convention is available) (31 U.S.C. 5336(c)(2)(B)(ii)).

(p) **Weighting and conclusion**: The United States enacted the Corporate Transparency Act and Beneficial Ownership Information Reporting Rule. These pieces of legislation include a definition of beneficial owner, in line with the FATF definition of beneficial owner, and which covers different types of companies (LLCs, LLPs, and corporations, with exception of very specific entities) to ensure that there is adequate, accurate and updated basic and BO information that can be obtained or accessed by competent authorities in a timely manner. They do so by requiring certain U.S. and foreign entities to register some basic and full beneficial ownership information with FinCEN, on top of State level requirements. Minor shortcomings remain regarding c.24.3, 24.4, 24.5, 24.6, 24.7, 24.9, 24.12 and 24.14, in that not all entities are required to register although some mitigating measures are in place (for

example, MSBs are otherwise subject to heavy regulatory and reporting requirements).

As another minor deficiency, the CDD rule enacted in 2018 allows for including a residential or business street address of next of kin or contact individual, but only where a beneficial owner's residential or business address is not available; covered FIs do not need to update BOI on a periodic basis but on a risk-basis; there is no explicit obligation for companies or legal entities to maintain information for at least five years, which could lead to an asymmetry with information available through FIs and FinCEN. However, the re-rating of R.24 to LC also took into account that some measures existed at the time of the MER which meant some important criteria were already rated "Met" or "Mostly Met" and that improvements made on basic and beneficial ownership information (c.24.3 and c.24.6) were given greater weight. **Recommendation 24 is rated Largely Compliant**.

Conclusion

Overall, the United States has made progress in addressing some of its technical compliance deficiencies and has been re-rated on Recommendation 24, re-rated LC.

The table below shows the United States' MER ratings and reflects the progress it has made, and any re-ratings based on this and previous FURs:

Table 1. Technical compliance ratings, February 2024

R.1	R.2	R.3	R.4	R.5
PC	C	LC	LC	C
R.6	**R.7**	**R.8**	**R.9**	**R.10**
LC	LC	LC	C	LC (FUR 2020)
R.11	**R.12**	**R.13**	**R.14**	**R.15**
LC	PC	LC	LC	***LC (FUR 2020)***
R.16	**R.17**	**R.18**	**R.19**	**R.20**
PC	LC	LC	LC	PC
R.21	**R.22**	**R.23**	**R.24**	**R.25**
C	NC	NC	***LC (FUR 2024)***	PC
R.26	**R.27**	**R.28**	**R.29**	**R.30**
LC	C	NC	C	C
R.31	**R.32**	**R.33**	**R.34**	**R.35**
LC	C	LC	LC	LC
R.36	**R.37**	**R.38**	**R.39**	**R.40**
LC	LC	LC	LC	C

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

The United States has five Recommendations rated PC and three Recommendations rated NC. The United States will report back to the FATF on progress achieved in improving the implementation of its AML/CFT measures in its 5th round mutual evaluation.

Annex to the FUR

Summary of Technical Compliance –Deficiencies underlying the ratings

Recommendations	Rating	Factor(s) underlying the rating[7]
1. Assessing risks & applying a risk-based approach	PC	• Lack of sufficient and effective mitigation measures against vulnerabilities of the high-end real estate agents, lawyers, accountants, trustees, and CFAs due to non-coverage under comprehensive BSA AML/CFT regime. • Exemptions and thresholds not supported by proven low risk. • Scope issue: All investment advisers are not covered
2. National co-operation and co-ordination	C	• The Recommendation is fully met.
3. Money laundering offences	LC	• Mere possession is not criminalised and mere acquisition through the commission of the predicate offense is not considered ML. • Tax crimes are not specifically predicates for ML. • The list of predicate offenses for ML does not explicitly extend to all conduct that occurred in another country.
4. Confiscation and provisional measures	LC	• The power to confiscated instrumentalities is not available for all predicate offenses. • There is no general provision to freeze/seize non-tainted assets prior to a conviction to preserve them to satisfy a value-based confiscation order.
5. Terrorist financing offence	C	• The Recommendation is fully met.
6. Targeted financial sanctions related to terrorism & TF	LC	• TFS have not been applied to all persons designated by the UN pursuant to UNSCRs 1267/1988/1989. • Designations are not always implemented without delay.
7. Targeted financial sanctions related to proliferation	LC	• •TFS have not been applied to all persons designated by the UN pursuant to UNSCRs 1718 and 1737.
8. Non-profit organisations	LC	• The required 5 years retention period for records of domestic and international transaction and other information is not met in all circumstances. • Not all houses of worship apply to IRS for preferential tax treatment and not all are subject to state requirements in terms of licensing/registration.
9. Financial institution secrecy laws	C	• The Recommendation is fully met.
10. Customer due diligence	LC (FUR 2020)	• Scope issue: Not all investment advisers are covered. • FIs (other than in the securities and derivatives sectors) are not explicitly required to identify and verify the identity of persons authorized to act on behalf of customers. • FIs are not explicitly required to understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship, or understand the ownership and control structure of customers that are legal persons/arrangements. • Lack of clear explicit requirements on the BO requirements including other trust relevant parties for legal arrangements (that are not legal entities). • Limited measures taken to improve the $3,000 occasional threshold gap for MSBs. • Limited measures taken to improve gaps regarding life insurance companies and. investment advisers.

[7] Deficiencies listed are those identified in the MER unless marked as having been identified in a subsequent FUR.

Recommendations	Rating	Factor(s) underlying the rating[7]
11. Record keeping	LC	• 5-year record retention requirement restricted to account files, business correspondence and results of any analysis that are supporting documentation for a SAR. • Existence of thresholds for triggering the record-keeping requirement.
12. Politically exposed persons	PC	• Scope issue: MSBs, life insurance companies and all investment advisers are not covered. • Domestic and international organizations PEPs are not specifically covered. • The requirements of c.12.1 apply to family members and close associates of foreign PEPs but not those of domestic or international organizations. • Concerns about the scope of BO identification in case of foreign PEPs.
13. Correspondent banking	LC	• No specific requirement to obtain senior management approval before opening a new correspondent account. • No explicit obligation to make a determination of a correspondent's reputation or quality of its AML controls and supervision.
14. Money or value transfer services	LC	• No formal agent monitoring requirements for MSBs. •
15. New technologies	LC (MER and FUR 2020)	• Scope issue: Not all investment advisers are covered. • No explicit requirements for FIs to address the risks presented by new technologies, though, the NMLRA does address risk related to new technology, and measures in place in the FFIEC Manual relating to new products and services are frequently interpreted by FIs and supervisors to address the risk of new technologies, and some enforcement measures reflect this. • Scope coverage of CVCs in relation to c15.4 - US is assessed to have mostly met this criterion, with the main concern relating to whether all legal persons incorporated in US performing of VASP (even if there is no US person or nexus) would be covered. • Supervision of CVCs in relation to c15.6 – US is assessed to have mostly met this criterion with the main concern relating to whether there is an adequate risk-based approach adopted to identifying and inspecting higher risk CVC operators. • CDD and other preventive measures in relation to c15.9 – US is assessed to have partly met this criterion with the main concerns relating to: (i) US$3,000 thresholds for CDD for MSBs (and hence CVCs that come under this regime), (ii) lack of clarity on whether CVCs transfer relating to non MSBs are clearly covered under c15.9(b); (iii) limited measures in relation to domestic PEPs and PEPs from international organisations, including their family members and close associate, and (iii) US$5,000 threshold for SAR reporting.
16. Wire transfers	PC	• Requirements apply subject to a $3,000 threshold for both domestic and international wire transfers. • No explicit requirements to include all the originator and beneficiary information in the transmittal order. • No explicit requirements to verify originator and beneficiary information below the threshold in case of suspicion of ML/TF • No explicit requirements for MSBs to consider information from both the ordering and beneficiary sides for SAR determination. • No explicit obligations for intermediary or beneficiary FIs on executing, rejecting, or suspending transactions due to lack of required information.
17. Reliance on third parties	LC	• Scope issue: Not all investment advisers are covered. • No specific obligations on relying FIs to immediately obtain core CDD information from the relied upon FI.
18. Internal controls and foreign branches and subsidiaries	LC	• Scope issue: Not all investment advisers are covered.

Recommendations	Rating	Factor(s) underlying the rating[7]
19. Higher-risk countries	LC	• Scope issue: Not all investment advisors are covered. • EDD measures do not apply automatically to business relationships and transactions with natural persons in general from jurisdictions identified by FATF as having strategic AML/CFT deficiencies.
20. Reporting of suspicious transaction	PC	• Scope issue: Not all investment advisers are covered. • Existence of thresholds for filing SARs. • Time allowed to file SARs (30 and 60 calendar days) does not meet the promptness criteria.
21. Tipping-off and confidentiality	C	• The Recommendation is fully met.
22. DNFBPs: Customer due diligence	NC	• Scope issues: • Other than casinos, DNFBPs are only subject to limited CDD obligations (R.10) when filing Form 8300 reports. • Other than casinos, R.11 only applies to DNFBPs on a very limited basis in relation to their obligation to file CTRs and does not apply to company formation agents at all. • No DNFBPs are subject to R.12.DNFBPs are not subject to R.15, although the AML program requirements for casinos, and dealers in precious metals and stones may go some way towards meeting these requirements. • Where there is coverage, the deficiencies noted in relation to R10, R.11 and R.12 flow through to R.22.
23. DNFBPs: Other measures	NC	• Scope issues: • No DNFBPs (other than casinos) are subject to R.20. • No DNFBPs (other than casinos and dealers in precious metals/stones) are subject to R.18. • No DNFBPs (other than casinos, dealers and precious metals and stones) are subject to R.19. • No DNFBPs (other than casinos) are subject to R.22 • Where there is coverage, the deficiencies noted in relation to R18, R.19, R.20 and R22 flow through to R.23.
24. Transparency and beneficial ownership of legal persons	LC (FUR 2024)	• No mechanism to ensure accuracy of basic information obtained by State registries and keep the information up to date. • No requirement for companies to maintain register of shareholders within the country. • Minor shortcomings remain regarding c.24.3, 24.4, 24.5, 24.6, 24.7, 24.9, 24.12, and 24.14, in that not all entities are required to register (even though some mitigant measures in place) o The CDD rule allows for including a residential or business street address of next or kind or contact individual, but only where a beneficial owner's residential or business address are not available; financial institutions do not need to update BOI on a periodic basis but on a risk-basis, based on information identified in the course of ongoing monitoring. o No explicit obligation for companies or legal entities to maintain information for at least five years, which could lead to an asymmetry in information available through FIs and through the FinCEN register. o Improvements regarding use of nominees and sanctions only apply to 'reporting companies' as defined by the CTA and BOI Reporting Rule, which is nevertheless defined broadly.
25. Transparency and beneficial ownership of legal arrangements	PC	• Although there are general fiduciary obligations imposed on trustees, these generally address trust law broadly; but do not appear to address obligations on trustees to obtain and hold adequate, accurate and current information on the identity of regulated agents of the trust, service providers, a protector, if any, all beneficiaries, or the identity of any natural person exercising ultimate effective control over the trust. • The obligations to keep information accurate and up-to-date only apply to trust companies. • Trust instruments that could block the ability of trustees to provide

Recommendations	Rating	Factor(s) underlying the rating[7]
		information about the trust to FIs and DNFBPs upon request are not prohibited. • LEAs can obtain relevant information provided they know whether a person is a trustee, but there is no enforceable obligation on trustees to declare their status to FIs. • Due to the foregoing issues, it cannot be said that information will be provided to foreign authorities rapidly. • There are requirements in banking, trust, and tax law that, taken together, meet the 5-year records retention standard but these only apply to trust companies for the most part. • The UTC requires trustees to identify property subject to a trust, but that obligation can be overridden by the terms of the trust. • Information may not be obtained in a timely manner or at all in some cases.
26. Regulation and supervision of financial institutions	LC	• Scope issue: Not all investment advisers are covered. • At the time of on-site, three States did not license MSBs, resulting in no background checks.
27. Powers of supervisors	C	• The Recommendation is fully met.
28. Regulation and supervision of DNFBPs	NC	• Scope issue: Other than for casinos, dealers in precious metals and stones, and in relation to examination for Form 8300 compliance, there are no competent authorities designated to supervise DNFBPs' compliance with AML/CFT obligations.
29. Financial intelligence units	C	• The Recommendation is fully met.
30. Responsibilities of law enforcement and investigative authorities	C	• The Recommendation is fully met.
31. Powers of law enforcement and investigative authorities	LC	• While there are mechanisms in places to identify account holders and their assets, there is no general mechanism to do so. S.314(a) is powerful tool but available in limited circumstances.
32. Cash couriers	C	• The Recommendation is fully met.
33. Statistics	LC	• The U.S. does not maintain comprehensive statistics on the investigations, prosecutions and convictions related to the State ML offenses, or statistics on the property frozen, seized and confiscated at the State level.
34. Guidance and feedback	LC	• Sectors not subject to the comprehensive AML/CFT requirements are only covered to some extent because of the limited application of the Form 8300 reporting guidance related to cash transactions. • There is a case to align guidance more to vulnerabilities in minimally covered DNFBP sectors.
35. Sanctions	LC	• Scope issue: Not all investment advisers are covered, and DNFBPs (other than casinos and dealers in precious metals/stones) are only partly covered.
36. International instruments	LC	• The U.S has minor deficiencies in its implementation of the Vienna and Palermo conventions (see R.3).
37. Mutual legal assistance	LC	• Where dual criminality applies, the minor shortcomings noted in R.3 may be a barrier to granting MLA request. • The interception of communications can only be undertaken as part of a U.S. investigation. • The OIA case management does not currently allow the monitoring of the time taken to incoming and outgoing requests.
38. Mutual legal assistance: freezing and confiscation	LC	• In the context of dual criminality requirements, the gaps identified under R.3 may be a barrier to providing freezing and confiscation assistance, particularly when the predicate offense is not covered in the U.S.
39. Extradition	LC	• The U.S. does not have multiple bilateral extradition treaties explicitly listing ML/TF as extraditable offenses.
40. International Co-operation	C	• The Recommendation is fully met.

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Anti-money laundering and counter-terrorist financing measures in the United States

7th Follow-up Report & Technical Compliance Re-Rating

As a result of the United States' progress in strengthening its measures to fight money laundering and terrorist financing since the assessment of the country's framework, the FATF has re-rated the country on one Recommendation.

Follow-up report