



Update to FATF Best Practices Paper on Combatting the Abuse of Non-Profit Organisations (NPOs)

Template for non-profit organisations

Background

In June 2022, the FATF Plenary agreed to undertake a project to review and update the [Best Practices Paper on Combatting the Abuse of NPOs](#), to effectively apply and implement risk-based measures to protect NPOs most vulnerable for potential (terrorist financing) TF. The project may also identify potential targeted amendments to R.8/INR.8.

The purpose of this survey is to collect **examples from NPOs regarding measures to protect them from potential TF abuse.**

The information provided may be used in Annex II (“NPOs’ examples”) and Annex III (“Access to financial services examples”) of the updated FATF Best Practices Paper on Combatting the Abuse of NPOs. The source of information will be identified (unless you specify otherwise).

Provision of examples

We invite NPOs to share **one or more** example(s). Please keep your example(s) **concise and succinct, to half a page to as far as possible**. Please complete the survey in English and send it to the Secretariat (Claire.LEGER@fatf-gafi.org) by **Monday 10 October, 6pm CET**, with the subject-line “Comments of [author] on the update to FATF NPO BPP”.

We thank you for your kind contribution.

Please note that the Secretariat will not provide feedback on each individual submission. However, the Secretariat or a member of the project group might contact you to obtain additional information relating to the example(s) that you submit. The FATF will not share this information with third parties without your consent.

Country: United States

Name of the NPO responding: Charity & Security Network (C&SN)

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Examples for Annex II.

- 1. Adopting a risk-based approach:** understanding TF risks and risk of TF abuse, and taking proportionate measures to address such risks.

This could include measures on sources of funding, on beneficiaries, and more generally safeguards to ensure funds are used for the NPOs defined objectives.

Example:

United States' 2022 National Terrorist Financing Risk Assessment

In March 2022, the United States (U.S.) Treasury Department published its [2022 National Terrorist Financing Risk Assessment \(NTFRA\)](#), authored by its Office of Terrorist Financing and Financial Crimes (TFFC), and updating the [2018 NTFRA](#) and [2015 NTFRA](#). One of the key findings of the Risk Assessment (RA) includes: "...Treasury and other U.S. government agencies note that most charities and NPOs fully comply with the law, that not all tax-exempt charitable organizations present the same level of TF [terrorist financing] risk, and that the vast majority of U.S.-based tax-exempt charitable organizations face little or no risk of being abused for TF". Accordingly, the Treasury Department committed to "continue to encourage the implementation of proportionate and risk-based AML/CFT [anti-money laundering/countering the financing of terrorism] measures to ensure legitimate humanitarian assistance flows to those most in need."

In regards to the U.S. Treasury Department's approach to engaging the non-profit (NPO) sector, as necessitated by the Financial Access Task Force (FATF) R.8's standard for the RA process, the Treasury Department conducted one outreach meeting before the NTFRA was released. This built off of Treasury conducting outreach ahead of the *2018 NTFRA*, and was a continued improvement from there being no outreach ahead of the *2015 NTFRA*. NPOs requested to review and provide input on a draft ahead of final publication, however, Treasury did not undertake further engagement nor share a draft ahead of releasing the *2022 NTFRA*.

The *NTFRA* commits to approaching NPOs' terrorist risk vulnerabilities by applying proportionality and incorporating a risk-based approach (RBA) to its assessments, noting that although "terrorist groups have misused these organizations to support their activities...these events remain infrequent compared to the overall population of charitable organizations in the United States." It goes on to praise NPOs for enhancing "risk-mitigation measures, including due diligence, governance, transparency, accountability, and other compliance measures, even in crisis situations." NPOs were encouraged to see that the *NTFRA* acknowledged the de-risking and financial access challenges that NPOs experience, particularly in geographic locations that are deemed "high-risk", as NPOs have shared these concerns with the Treasury Department for some time.

Please find C&SN's summary and analysis of the *NTFRA* [here](#).

U.S.' 2022 National Strategy for Combatting Terrorist and Other Illicit Financing

In May 2022, the U.S. Treasury Department published its [2022 National Strategy for Combatting Terrorist and Other Illicit Financing \(2022 Strategy\)](#), authored by the Office of TFFC. The main objective of the *2022 Strategy* "is to encourage continued efforts to modernize the U.S. AML/CFT regime so that the public and private sectors can effectively focus resources against the most significant illicit finance risks." It lays out recommendations for addressing the main risks highlighted in the *2022 NTFRA*.

In regards to the U.S. Treasury Departments approach to engaging the NPO sector, the Treasury Department conducted no NPO outreach, nor did it solicit or facilitate input from NPOs. Despite [recommendations from NPOs](#), the Treasury Department also did not share a draft for NPOs to contribute to prior to publication.

The *2022 Strategy* outlines a number of commitments, including:

- “An update to the AML program rules for different types of financial institutions;
- ...considering new and updated AML/CFT guidance, for example, updating the Federal Financial Institutions Examination Council (FFIEC) [Bank Secrecy Act] BSA/AML examination manual;
- Hold[ing] regular public-private sector engagements on key illicit finance risks, to include regional meetings on the NRAs [National Risk Assessments] and outreach to key AML/CFT thought leaders and experts”;
- Continu[ing] to modernize the policy approach and operational architecture for sanctions use...to ensure sanctions are deployed more strategically and efficiently”;
- Regularly updating the U.S.’ [AML/CFT National Priorities](#).

These commitments present a wealth of opportunities for cooperation and engagement between the Treasury Department, banks/financial institutions(FIs)/regulators/examiners, and NPOs, to collaboratively work on. Additionally, AML/CFT thought leaders and experts within the NPO sector should be engaged as a resource.

The *2022 Strategy* rightly lays out progress made on commitments from the *2020 Strategy*, including:

- “The passage of the AMLA [Anti-Money Laundering Act of 2020] [which] addresses the single most important gap in the U.S. AML/CFT regime”;
- “The AML/CFT regulatory and supervisory regime for financial institutions...becom[ing] more risk-focused and effective through a combination of updated guidance and supervisory tools and rulemaking activity.”

The Treasury Department’s commitment to implementing the RBA and modernizing sanctions, amongst others, is laudable and appreciated by a wide spectrum of organizations within the NPO sector. NPOs recommend Treasury utilizes this momentum to continue improving the proportionality of CFT measures, as the current U.S. AML/CFT framework still causes operational disruptions to humanitarian aid and creates de-risking challenges for NPOs. Likewise, they should include NPO input in further updates to AML/CFT guidance.

Please find C&SN’s summary and analysis of the *2022 Strategy* [here](#).

Treasury Department Engagement with NPOs

The Treasury Department has increased their engagement with the NPO sector through a variety of means: Roundtable Discussions on newly released General Licenses and accompanying frequently asked questions (FAQs); individual meetings with NPOs; Roundtable Discussions on the *2022 NTFRA* and the *2022 De-risking Strategy* (forthcoming in December 2022); and welcoming NPOs to submit concrete recommendations for their Sanctions Modernization initiative. At the invitation of, and after consultation with, Treasury, C&SN submitted a model Global General License (GL) to the Treasury in September 2022, with sign-on support from 27 humanitarian, peacebuilding, and human rights organizations. C&SN remains grateful for, and encouraged by, Treasury’s commitment to NPO engagement and their increased efforts in this regard over the past two years.

2. Participating in self-regulatory initiatives by representational organisations (e.g. independent monitoring organisation, international umbrella organisation, etc.)

Example:

Board of Directors

In the U.S. context, an NPO’s Board of Directors (BOD) is responsible for [ensuring NPO accountability](#) in resource use and transparency. There are a number of NPO associations and umbrella organizations that provide good governance measures and resources for the NPO sector. C&SN previously compiled a resource list for these associations and umbrella groups, in the

[Comments and Suggestions](#) submitted to Treasury ahead of publication of the *2018 NTFRA*. The information below is pulled directly from this submission and/or from each individual organization’s website:

Umbrella Groups & NPO Associations

- **Independent Sector:** “[Independent Sector](#) is the only national membership organization that brings together a diverse community of changemakers, nonprofits, foundations, and corporations working to strengthen civil society and ensure all people in the United States thrive.” Independent Sector developed the [Principles for Good Governance and Ethical Practice: a Guide for Charities and Foundations](#), which is comprised of “33 principles of sound practice that should be considered by every charitable organization as a guide for strengthening its effectiveness and accountability.” They also house the [Principles for Good Governance and Ethical Practice Resource Center](#).
- **National Council of Nonprofits:** [The National Council on Nonprofits](#) is a resource organization that “has over 25,000 organizational members, including 42 state associations of NPOs. In addition to providing background information on the sector to the public and a policy voice for its members, the council ‘produces and curates tools, resources, and samples for nonprofits.’” Resources include a [Financial Management](#) overview, [Financial Policy Guidelines and Examples](#), a [Nonprofit Audit Guide](#), [Principles and Practices - Where can you find "best practices" for nonprofits?](#), and [Myths About Nonprofits](#).
- **Council on Foundations:** “[The Council on Foundations](#) is the largest association of U.S. grantmakers” and “supports over 800 member organizations in the United States and around the world to build trust in philanthropy, expand pathways to giving, engage broader perspectives, and co-create solutions that will lead to a better future for all.” Resources include: [Governance and Compliance Issues for Foundation Financial Management](#), [Disaster Grantmaking](#), and [Legal Compliance Guidance](#).

Board of Directors & Governing Bodies

- **BoardSource:** [BoardSource](#) has over 30 years of experience in enhancing Board effectiveness and providing support to NPOs and their leaders on an international scale. “BoardSource’s core offering is a [year-round Board Support Program](#) that provides assessment-driven board development and supports organizations through an affordable and scalable membership model. BoardSource offers additional [membership programs](#), a wide range of [diagnostic tools](#), [educational programs](#), and [board support](#) to strengthen board performance.”

International Program Support

For in-depth information on International Program Support, including information on services offered by: InterAction; Humentum; the Council on Foundations Global Philanthropy Program; the Charity Aid Foundation (CAF) America; NGO [non-governmental organization] Source; TechSoup; the Saving Lives Together (SLT) initiative by the United Nations Security Management System (UNSMS); International Non-Governmental Organisations (INGOs) and International Organisations (IOs); and additional resources, please see pages 14 – 16 of C&SN’s [Comments and Suggestions for Update of the U.S. National Terrorist Financing Risk Assessment \(2018\)](#).

- 3. Implementing good governance measures** (e.g. organisational integrity, partner relationships, financial transparency, programme planning and monitoring, etc).

Example:

C&SN Overview

C&SN is an advocacy and resource organization that supports a robust Membership of humanitarian, peacebuilding, and human rights organizations, both domestically and abroad. C&SN is fiscally sponsored by [NEO Philanthropy](#), and primarily receives funding from foundations and some Members (it is not required to donate to be a Member). C&SN’s Director (and head of organization) holds a financial reporting meeting with NEO Philanthropy on a monthly basis for budget management, oversight, and planning purposes. Additionally, C&SN develops an Annual Budget

Plan and Report. We provide both written and financial reports to our foundation funders as required in our contractual obligations, and we routinely communicate in-between mandatory reporting periods to provide progress and status updates of our agreed upon work, and to review and assess the overall financial health.

C&SN has both an Advisory Board (AB) and an Executive Committee (EC), and we hold routine AB Meetings (every two months) and quarterly EC Meetings. The AB provides decision-making support, while the EC supports organizational development, strategic vision, and management oversight. We present our Annual Plans across all of our portfolios to both the AB and the EC.

To promote transparency and accountability, we provide our Members with: presentation of our Annual Plans; routine updates on C&SN's work; access to opportunities that impact their work; connections to partners and institutions; one-on-one support meetings for personal needs; and a [repository of C&SN resources](#), including Issue Briefs, Reports, Newsletters, Events, Op-eds, and Press Releases. We also lead a number of Working Groups under our thematic portfolios, hold monthly Members Meetings, and avail ourselves to our Member's needs on a continuous basis.

NPO Due Diligence & Compliance Measures

As a whole, the NPO sector has rigorous due diligence and compliance measures, as laid out in the C&SN and the London School of Economics (LSE) and Political Science's [NGO's Due Diligence and Risk Mitigation: A Holistic Approach](#) report. This report found that NPOs both develop and implement a number of internal controls to ensure strong risk mitigation and due diligence measures, in alignment with meeting the standards of AML/CFT regulatory regimes. A non-exhaustive list of risk mitigation measures includes: Record Keeping, Program Monitoring, Segregation of Duties, Policies and Procedures, Audits, and Staff Training. A non-exhaustive list of due diligence measures includes: Obtaining Details of Partner Organizations, Obtaining Copies of Partner Organization's Internal Documentation, Triangulating Data Amongst Fellow NPOs and/or Donors to Cross-reference, Conducting Capacity Assessments, Conducting Field Visits, and Screening Against Sanctions and Terrorist Lists. The report findings show that NPO's robust risk mitigation and due diligence measures exceed banks requirements to ensure AML/CFT regulatory compliance.

It is worth noting that there remains a lack of clarity from regulators and examiners surrounding expectations and requirements for carrying out due diligence, which impacts both NPOs and banks/FIs. This ambiguity leads banks to make invasive and overreaching due diligence requests that have significant negative impacts on NPOs and their beneficiaries, and that do not uphold the RBA. This especially impacts smaller NPOs that have less financial and personnel capacity to respond to overreaching due diligence requests. Likewise, [Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security](#), a joint Duke Law and Women Peacemakers Program report, found that these challenges also have gendered outcomes, disproportionately impacting women's organizations.

NPO Due Diligence & Risk Mitigation Resources

A non-exhaustive list of additional NPO due diligence and risk mitigation resources includes:

- [NGOs & Risk: Managing Uncertainty in Local-International Partnerships, Global Report](#), U.S. Agency for International Development (USAID), InterAction, and Humanitarian Outcomes;
- [Development Assistance and Approaches to Risk in Fragile and Conflict Affected States](#), Organisation for Economic Co-operation and Development (OECD);
- [Due Diligence in Grantmaking, Part III](#), NGO Source.

Examples for Annex III.

4. Measures to ensure access to financial services of legitimate NPOs

For example, issues could cover (non exhaustive list):

- a. Engagement with the financial sector to encourage appropriate implementation of a risk-based approach and ensuring legitimate NPOs' access to financial services.
- b. Types of measures that NPOs have implemented in their own operations to address financial institutions concerns.
- c. Regulatory requirements/measure applying to NPOs, helping to mitigate terrorist financing risk and ensuring access of legitimate NPOs to financial services (registration, good governance, due diligence, reporting, etc.).
- d. Engagement with the authorities, for example to develop an understanding of TF risks, NPO customers de-risking concerns, etc.
- e. Any other measures taken by NPOs to ensure access to financial services.

Example:

U.S. Multi-stakeholder Working Group (MSWG) on Financial Access

The U.S.' MSWG is hosted by the Humanitarian Agenda at the Center for Strategic and International Studies (CSIS), a U.S. think tank. Launching in September 2021, this iteration of the MSWG built off the [Association of Certified Anti-Money Laundering Specialists] ACAMS/World Bank Multi-stakeholder Dialogue that took place from 2016 – 2018. It brings together representatives from NPOs and the financial sector (banks/FIs/regulators), and officials from the U.S. government (USG) to promote collaborative dialogue between all actors, to foster understanding regarding de-risking and financial access and inclusion challenges and impacts, and to collectively develop actionable policy proposals. The MSWG has two Workstreams, one on Due Diligence, led by an NPO and financial sector actor, and one on Risk Sharing, led by an NPO and USG official. Discussions included a mock “transaction walkthrough” to understand at what point payments become delayed or rejected. Other topics discussed include: compliance obligations, FI incentives to bank and sustain banking NPOs, and exploring payment channels in sanctioned jurisdictions to enable international humanitarian aid delivery. The outcome of the MSWG is a report that includes a number of policy proposals for NPOs, the financial sector, and USG officials.

NPOs and the U.S. Congress

NPOs worked with Congressional offices to support a Banking Discrimination Letter addressed to the heads of U.S. banking regulators that requests updates to anti-money laundering/financial crimes compliance (AML/FCC) obligations and policies on sanctions, with the aim of promoting and safeguarding banking access in an equitable manner, especially for immigrant populations and for Muslim Americans. This letter highlights the discriminatory nature of AML/FCC obligations, practices, and policies that restrict or refuse financial services due to national origin or religion. It calls on the government to address these actions, noting their overlap with federal restrictions. The letter highlights de-risking and exclusion from financial services and systems for Middle Eastern, South Asian Americans, and Muslim and Arab communities. It notes that stringent compliance obligations that sanctions impose on banks greatly increase these challenges, which in practice leads financial institutions to not take a RBA to banking in conflict-impacted and sanctioned areas. One of the key messages highlights how a banking sector that is free from illicit actors and abuse is not at odds with – but complementary to – an inclusive and accessible financial system.

AMLA of 2020

One of the requirements under the AMLA of 2020, touted as “the [most consequential anti-money laundering legislation](#) passed by Congress in decades” and as “the most [comprehensive update to banking regulation](#) since the passage of the PATRIOT Act”, obliges the Treasury Department to create a *De-risking Strategy*, due to Congress in December 2022. The National Defense Authorization Act (NDAA) is the overarching legislation under which AMLA was passed.

[C&SN drafted Sense of Congress language](#) that was included in Section 6215(a) of AMLA:

- “providing vital humanitarian and development assistance and protecting the integrity of the international financial system are complementary goals”;
- “anti-money laundering, countering the financing of terrorism, and sanctions policies must ensure that the policies do not unduly hinder or delay legitimate access to the international financial system for underserved individuals, entities, and geographic areas”;
- “incidental, inadvertent benefits that may indirectly benefit a designated group in the course of delivering life-saving aid to civilian populations are not the primary focus of Federal Government enforcement efforts.”

De-risking

Treasury has conducted one Roundtable Discussion with NPOs to foster input into the forthcoming *De-Risking Strategy*. NPOs have once again asked to provide input into a draft, however, Treasury is not affording this opportunity, and has stated that the final *De-risking Strategy* may not be made public. NPOs urged Treasury to make the report public.

An important note on the de-risking challenges in the U.S. context is the discrepancy in banks/FIs/regulators and the USG’s views of the root causes of de-risking. For example, Treasury’s aforementioned [2022 Strategy](#) emphasized that “profitability concerns are usually the main reason for de-risking”, while [AML/\[countering financing of terrorism\] CFT experts think otherwise](#):

“It’s a false narrative to say lack of access due to profitability is the major cause of de-risking. It is mainly due to supervisory overreach and inconsistent direction on risk identification and mitigation.” – John J. Byrne, Esq., CAMS, Executive Vice President, Chairman, AMLRS Advisory Board

“It’s not profitability that drives de-risking, it’s risk that drives de-risking. And it’s compliance risk and scrutiny if banks don’t get it just right. It’s not profitability, it’s risk.” – Terry Pesce, President and CEO at Terry Pesce & Co LLC, Financial Crimes Legal and Regulatory Consulting

Financial sector actors have echoed the AML/CFT experts' reflections. Thus, the [root cause of de-risking](#) in the U.S. context stems from continual regulatory scrutiny and reviews, strict liability standards, and compliance risks, not profitability.

Financial Access Working Group (FAWG)

C&SN leads a FAWG that brings together a variety of actors who experience firsthand and/or work to address financial access and exclusion, and de-risking challenges. The FAWG gathers and disseminates resources on topics most relevant to its Members, and creates a space for Members to share challenges, approaches, impacts, and strategies. Members exchange updates on the various MSWG, Tri-sector, and Tri-partite Working Groups (WGs) and Dialogues taking place in the U.S., the UK, the Netherlands, and France, and facilitate ways to keep abreast of, and provide support to, the WGs and Dialogues in the Majority World (Global South).

Continued Advocacy & Facilitating Stakeholder Input

Given that there was no opportunity for input following Treasury’s *2022 NTFRA* and ahead of their *2022 Strategy*, C&SN submitted comments to Treasury [to facilitate NPO input](#). This included the following three recommendations:

- “1) Review CFT measures to improve alignment with international humanitarian, human rights and refugee law, per UN Security Council Resolutions (UNSCR) 2462 and 2482.
- 2) Issue a Global General License to ensure humanitarian aid and peacebuilding activities

can be carried out unfettered the moment a crisis breaks out.

- 3) Address financial access barriers for NPOs by making enforcement standards consistent with the risk-based approach.”

C&SN is grateful that Treasury supported the second recommendation and invited C&SN to submit the model Global GL, as previously mentioned, and looks forward to sustained engagement for next steps and priority actions on this.

Complementary Processes & Unified Goals

NPOs have developed cross-coalition coordination efforts and unified policy proposals across multiple processes, with the aim of providing solutions to address financial access and de-risking challenges, in addition to supporting Treasury’s efforts on AML/CFT and Sanctions Modernization. Accordingly, NPOs encouraged Treasury to utilize the policy proposals laid out in the CSIS report, C&SN’s model Global GL, and additional parallel efforts that propose further policy proposals to bolster their efforts and initiatives. Many of these proposals, such as adopting a Global GL, are echoed throughout these processes, and have the input, backing, and support of a wide array of stakeholders.

Any other issue:

Example:

The Trouble with Guidance

The significant difference in changes to guidance versus changes to law and policy is worth exploring. In November 2021, the BSA/AML Bank Examination Manual (BEM), which is released by a federal regulator consortium, the [Federal Financial Institutions Examination Council \(FFIEC\)](#), was updated from its 2014 version. FFIEC is responsible for “govern[ing] how federal bank examiners review bank compliance with the Bank Secrecy Act and anti-money laundering and terrorist financing requirements”.

The 2014 BSA/AML BEM described NPOs as “susceptible to abuse by money launderers and terrorists”. Once FATF revised R.8 in 2016, effectively [revoking their previous stance of NPOs being “particularly vulnerable”](#) to terrorist and terrorist financing abuse, the 2014 BSA/AML Manual became outdated. The much improved update to the [2021 BSA/AML Manual](#) emphasizes risk mitigation, taking into account the self-regulatory and due diligence measures that NPOs stringently apply, especially in areas deemed “high-risk”. It also notes that “Examiners are reminded that the U.S. government does not view the charitable sector as a whole as presenting a uniform or unacceptably high risk of being used or exploited for ML/TF or sanctions violations.”

Despite this significant update to the BEM, regulators have reiterated that the [Manual itself is only guidance and instructions](#), and bears no legal binding. While the update has enabled some progress, it is not sufficient to make banks feel comfortable enough to change their actions towards banking NPOs. Thus, to sustainably address the challenges noted throughout this submission, the U.S. AML/CFT regime itself needs to be updated.