

CRS Report for Congress

Received through the CRS Web

Terrorist Financing: Current Efforts and Policy Issues for Congress

August 20, 2004

Martin A. Weiss, Coordinator
Analyst in International Trade and Finance
Foreign Affairs, Defense, and Trade Division

Terrorist Financing: Current Efforts and Policy Issues for Congress

Summary

On July 22, the 9/11 Commission Report was released. One of its recommendations is that the priority of the U.S. strategy to combat terrorist financing should shift from freezing assets to following terrorists' money trails in order to gain intelligence leads. This recommendation has led to widespread discussion of the overall U.S. effort to combat terrorist financing. This report provides an agency by agency survey of U.S. efforts and presents numerous policy issues. This report will not be updated.

Contents

Introduction	1
Legislation on Terrorist Financing	2
The Bank Secrecy Act	3
The International Emergency Economic Powers Act	3
The Money Laundering Control Act	4
The Annunzio-Wylie Anti-Money Laundering Act	4
The Money Laundering Suppression Act	5
The Money Laundering and Financial Crimes Strategy Act	5
Title III of the USA PATRIOT Act	5
The Intelligence Community	8
The Interagency Process	13
Financial Regulators and Institutions	14
The Offices within the Department of the Treasury	14
The Financial Institution Regulators	16
Internal Revenue Service	20
Departments of Homeland Security and Justice	24
Bureau of Customs and Border Protection (CBP)	24
Role in Terrorist Financing	24
Capabilities and Resources	25
Measures of Success and Accomplishments	25
Relationships and Coordination with other Agencies	26
Bureau of Immigration and Customs Enforcement (ICE)	26
Role in Terrorist Financing	26
Capabilities and Resources	28
Measures of Success and Accomplishments	28
Relationships and Coordination with other Relevant Agencies	28
U.S. Secret Service	29
Secret Service Involvement	30
Caveats and Their Meaning	30
The Federal Bureau of Investigation (FBI)	31
The FBI Mission to Counter Money Laundering	32
The FBI Mission to Counter Terrorist Financing	33
TFOS Resources and Capabilities	34
Information Access	35
FBI Measures of Success and Related Accomplishments	35
Relationships to and Coordination with Other Agencies	36
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)	38
ATF's mission and roles related to terrorist financing	38
Capabilities and resources	38
Measures of success and accomplishments	38
ATF coordination with other federal agencies	39

Drug Enforcement Administration (DEA)	39
DEA’s responsibilities with regard to terrorist financing	39
DEA resources devoted to combating terrorist financing	40
Measures of Success and Accomplishments	40
DEA Coordination with Other Federal Agencies	40
The Department of State	41
Regulating the International System	42
Financial Action Task Force (FATF)	43
Assessing Compliance	44
Conclusion: Policy Issues for Congress	49

List of Tables

Table 1. Middle Eastern Compliance with Counter-Terrorist Finance Activity	48
---	----

Terrorist Financing: Current Efforts and Policy Issues for Congress

Introduction¹

Since the September 11, 2001 attacks, there has been significant interest in terrorist financing. Following the attacks, the administration stated its goal of “starving the terrorists of funding and shutting down the institutions that support or facilitate terrorism.”² In the months immediately following the attacks, substantial funds were frozen internationally. After this initial sweep, the freezing of terrorist assets slowed down considerably. As of November 2002, analysts noted that of the roughly \$121 million in terrorist assets frozen worldwide, more than 80% of that had been blocked in the first three months following the attacks.³ Over the next year and a half, an additional \$80 million was frozen, bringing the current total to roughly \$200 million.⁴

According to the 9/11 Commission: the United States must “[e]xpect less from trying to dry up terrorist money and more from following the money for intelligence, as a tool to hunt terrorists, understand their networks, and disrupt their operations.”⁵ According to Commission Chairman Thomas Kean, “[r]ight now we have been spending a lot of energy in the government trying to dry up sources of funding.” Kean further noted that, “[o]bviously if you can dry up money, you dry it up, but we believe one thing we didn’t do effectively is follow the money. That’s what we have to do.”⁶

While the goals of freezing terrorist funds and tracking them for intelligence are not mutually exclusive, they tend to emphasize different strategies and approaches. For example, the FBI and other intelligence agencies have a history of gathering intelligence by monitoring financial transactions and relationships over extended

¹ This section was prepared by Martin A. Weiss/FDT.

² Statement of Secretary Paul O’Neill on Signing of Executive Order Authorizing the Treasury Department to Block Funds of Terrorists and their Associates, September 24, 2001.

³ CRS Report RL31658, *Terrorist Financing: The U.S. and International Response*, pg. 1.

⁴ Testimony of Samuel W. Bodman, Deputy Secretary U.S. Department of the Treasury Before the Senate Committee on Banking, Housing and Urban Affairs, April 29, 2004.

⁵ Executive Summary, Final Report of the National Commission on Terrorist Attacks Upon the United States, July 2004, pgs. 18-19, available at [<http://www.9-11commission.gov/report/911ReportExec.pdf>]

⁶ See Laura Sullivan, “U.S. Split on Tracing, Freezing Terror Funds,” *Baltimore Sun*, Aug. 2, 2004.

periods of time, for example in its investigations of the Mafia, and then using laws against financial crimes to eventually arrest the perpetrators. The Department of the Treasury, by contrast, has traditionally favored freezing terrorist assets as soon as possible. This tension is echoed by Jonathan Winer, a former Deputy Assistant Secretary of State for International Law Enforcement under President Bill Clinton, “[t]here is a big ideological divide right now between the asset freezers and the people who want to follow the money as it changes hands. There’s no easy answer one way or another.”⁷ Effectively combating terrorist financing requires effective coordination of many different elements of national power including intelligence gathering, financial regulation, law enforcement, and building international coalitions. “There are a number of areas where jurisdiction is blurred,” according to one senior official.⁸

Congress has taken an active interest in this debate on terrorist financing, holding numerous hearings over the past few years, both in the House, and in the Senate. This report responds to this increased interest in terrorist financing by analyzing the roles of relevant U.S. agencies and departments involved in tracking and seizing terrorist financing.

This report focuses on U.S. efforts to combat financing for terrorist acts against the United States. For a discussion of the U.S. overall terrorism strategy, see CRS Report RL32522: *U.S. Anti-Terror Strategy and the 9/11 Commission Report*. For a discussion of the full 9/11 Commission recommendations, see CRS Report RL32519: *Terrorism: Key Recommendations of the 9/11 Commission and Recent Major Commissions and Inquiries* and CRS Report RL32501: *9/11 Commission Recommendations: New Structures and Organization*. For a discussion of terrorist financing in general, see CRS Report RS21902: *Terrorist Financing: The 9/11 Commission Recommendation* and CRS Report RL31658: *Terrorist Financing: The U.S. and International Response*, and CRS Report RL32499: *Saudi Arabia: Terrorist Financing Issues*.

Legislation on Terrorist Financing⁹

“Money laundering” has traditionally been understood to mean the process by which “dirty” money derived from illegal activity is disguised as legitimate — or “clean” — by virtue of how it is distributed among financial institutions. The federal government began to target money laundering in 1970, with the passage of the Bank Secrecy Act (BSA) and subsequent amendments. In the years following the enactment of the BSA, Congress added criminal and civil sanctions for money launderers. The threat posed by terrorists, however, forced Congress in 2001 to bring terrorist financing — which often is accomplished with legally-derived funds — within the range of activities punishable under the federal money laundering laws. What follows is an overview of these laws.

⁷ Ibid.

⁸ Lauren Shepherd, “Nominees stalled by turf battle,” *The Hill*, June 9, 2004.

⁹ This section was prepared by Nathan Brooks/ALD

The Bank Secrecy Act. Congress laid the foundations for the federal anti-money laundering (AML) framework in 1970 when it passed the BSA,¹⁰ the major money laundering provisions of which make up the Currency and Foreign Transaction Reporting Act (CFTRA). The BSA framework focuses on financial institutions¹¹ record-keeping, so that federal agencies are able to apprehend criminals by tracing their money trails. Under this statute and subsequent amendments to it, primary responsibility rests with the financial institutions themselves in gathering information and passing it on to federal officials. CFTRA also contains civil¹² and criminal¹³ penalties for violations of its reporting requirements.

Under CFTRA, financial institutions must file reports for cash transactions exceeding the amount set by the Secretary of the Treasury in regulations.¹⁴ The Secretary has set the amount for filing these currency transaction reports (CTRs) at \$10,000.¹⁵ The Secretary also requires financial institutions to file suspicious activity reports (SARs) for transactions of at least \$5,000 in which the bank suspects or has reason to suspect the transaction involves illegally-obtained funds or is intended to evade reporting requirements.¹⁶

CFTRA contains significant requirements related to foreign-based monetary transactions. Citizens are required to keep records and file reports regarding transactions with foreign financial agencies, and the Treasury Secretary must promulgate regulations in this area.¹⁷ The statute also requires the filing of reports by anyone who exports from the United States or imports into the United States a monetary instrument of more than \$10,000.¹⁸

The Internal Revenue Service has certain authorities and responsibilities under the BSA (see p.20).

The International Emergency Economic Powers Act. Under the International Emergency Economic Powers Act¹⁹ (IEEPA), enacted in 1977, the President has broad powers pursuant to a declaration of a national emergency with

¹⁰ P.L. 91-508 (codified, as amended, at 12 U.S.C. § 1829b; 12 U.S.C. §§ 1951-1959; 31 U.S.C. § 5311 et seq.).

¹¹ “Financial institution” is defined very broadly to include, *inter alia*, banks, thrifts, credit unions, pawn brokers, broker-dealers, insurance companies, auto dealers, travel agencies, casinos, the United States Postal Service, etc. 31 U.S.C. § 5312(a)(2).

¹² *Id.* at § 5321.

¹³ *Id.* at § 5322.

¹⁴ 31 U.S.C. § 5313(a).

¹⁵ 31 C.F.R. § 103.22(b)(1).

¹⁶ 31 C.F.R. § 103.18.

¹⁷ 31 U.S.C. § 5314.

¹⁸ 31 U.S.C. § 5316.

¹⁹ Title II of P.L. 95-223 (codified at 50 U.S.C. § 1701 et seq.).

respect to a threat “which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States.”²⁰ These powers include the ability to seize foreign assets under U.S. jurisdiction, to prohibit any transactions in foreign exchange, to prohibit payments between financial institutions involving foreign currency, and to prohibit the import/export of foreign currency.²¹

The Money Laundering Control Act. Congress criminalized money laundering in 1986 with the passage of the Money Laundering Control Act.²² Defining money laundering as conducting financial transactions with property known to be derived from unlawful activity in order to further or conceal such activity, the act made three specific types of money laundering illegal: 1) domestic money laundering; 2) international money laundering; and 3) attempted money laundering uncovered as part of an undercover sting operation.²³ If the transaction is for an amount in excess of \$10,000, the government does not have to show that the defendant knew the transaction in question was meant to further or conceal an illegal act, only that the defendant knew the property was procured via illegal activity.²⁴

The Annunzio-Wylie Anti-Money Laundering Act. With the passage of the Annunzio-Wylie Anti-Money Laundering Act²⁵ in 1992, Congress increased the penalties for depository institutions that violate the federal AML laws. In addition to authorizing the Secretary of the Treasury to require filings of the aforementioned SARs, the act made it possible for banking regulators to place into conservatorship banks and credit unions that violate these laws.²⁶ In addition, the act gave the Office of the Comptroller of the Currency (OCC) the power to revoke the charters of national banks found to be guilty of money laundering or cash reporting offenses,²⁷ and gave the Federal Deposit Insurance Corporation (FDIC) the authority to

²⁰ 50 U.S.C. § 1701(a). Under the Trading With the Enemy Act of 1917 (40 Stat. 411; codified, as amended, at 50 U.S.C. app. § 1 et seq.), the President has broad economic sanctioning authority during wartime. IEEPA extended these powers to situations in which the President declares a national emergency.

²¹ 50 U.S.C. § 1702. Relying on the powers granted in IEEPA, President Bush on September 23, 2001, issued Executive Order 13224, authorizing the Department of the Treasury to designate individuals and entities as terrorist financiers, who are then denied access to the U.S. financial system. The Treasury Department’s Office of Foreign Assets Control (OFAC) maintains this specially designated nationals (SDN) list, which can be found at [<http://www.ustreas.gov/offices/eotffc/ofac/sdn/>] (last visited July 2, 2004).

²² P.L. 99-570, § 1352 (codified, as amended, at 18 U.S.C. §§ 1956-1957).

²³ 18 U.S.C. § 1956.

²⁴ 18 U.S.C. § 1957. For these section 1957 crimes involving transactions over \$10,000, a much larger group of transactions are included than are illegal under section 1956.

²⁵ Title XV of P.L. 102-550 (codified at various sections of Titles 12 and 31 of the U.S. Code).

²⁶ 12 U.S.C. § 1821(c)(5)(M); 12 U.S.C. § 1786(h)(1)(C).

²⁷ 12 U.S.C. § 93(c).

terminate federal insurance for guilty state banks and savings associations.²⁸ The Annunzio-Wylie Act also introduced federal penalties for operating money transmitting businesses²⁹ operating without licenses under state law.³⁰

The Money Laundering Suppression Act. In the early 1990's it became apparent that the number of CTRs being filed greatly surpassed the ability of regulators to analyze them. So, in 1994, Congress passed legislation³¹ mandating certain exemptions from reporting requirements in an effort to reduce the number of CTR filings by 30%.³² In addition, the act directed the Treasury Secretary to designate a single agency to receive SARs filings.³³ Under this statute, money transmitting businesses are required to register with the Treasury Secretary. In addition, the act clarified the BSA's applicability to state-chartered and tribal gaming establishments.³⁴

The Money Laundering and Financial Crimes Strategy Act. Congress in 1998 directed the Treasury Secretary to develop a national strategy for combating money laundering.³⁵ As part of this strategy, the Treasury Secretary — in consultation with the U.S. Attorney General — must attempt to prioritize money laundering enforcement efforts by identifying areas of the U.S. as “high-risk money laundering and related financial crimes areas” (HIFCAs).³⁶ In addition, the Treasury Secretary may issue grants to state and local law enforcement agencies for fighting money laundering in HIFCAs.³⁷

Title III of the USA PATRIOT Act. In the wake of the terrorist attacks of September 11, 2001, Congress passed the USA PATRIOT Act.³⁸ Congress devoted

²⁸ 12 U.S.C. § 1818(w).

²⁹ These are those businesses engaged in check cashing, currency exchange, money transmission or remittance, money order/traveler's check redemption, etc. *See id.* at § 5330 note.

³⁰ 18 U.S.C. § 1960.

³¹ Title IV of P.L. 103-325 (codified at various sections of Title 31 of the U.S. Code).

³² 31 U.S.C. § 5313 note.

³³ *Id.* at § 5318 note.

³⁴ 12 U.S.C. § 5312(a)(2)(X).

³⁵ P.L. 105-310 (codified at 31 U.S.C. § 5340 et seq.).

³⁶ 31 U.S.C. § 5342. As of July, 2003, six such areas had been designated: New York/New Jersey; San Juan/Puerto Rico; Los Angeles; the southwestern border, including Arizona and Texas; the Northern District of Illinois (Chicago); and the Northern District of California (San Francisco). *See* Bureau of Justice Statistics Special Report: Money Laundering Offenders, 1994-2001, NCJ 199574 (July 2003), available at [<http://www.ojp.usdoj.gov/bjs/pub/pdf/mlo01.pdf>] (Last visited July 2, 2004).

³⁷ 31 U.S.C. § 5354.

³⁸ P.L. 107-56. The acronym stands for “United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists.”

Title III of this act to combating terrorist financing.³⁹ Given that funds used to finance terrorist activities are often not derived from illegal activities, prosecution for funding terrorist activities under the pre-USA PATRIOT Act money laundering laws was difficult. Title III, however, made providing material support to a foreign terrorist organization a predicate offense for money laundering prosecution under section 1956 of Title 18 of the U.S. Code.⁴⁰

Under Title III, the Treasury Secretary may require domestic financial institutions to undertake certain “special measures” if the Secretary concludes that specific regions, financial institutions, or transactions outside of the U.S. are of primary money laundering concern.⁴¹ In addition to retaining more specific records on financial institutions, these special measures include obtaining information on beneficial ownership of accounts and information relating to certain payable-through⁴² and correspondent accounts.⁴³ The Treasury Secretary is also empowered to prohibit or restrict the opening of these payable-through and correspondent accounts,⁴⁴ and U.S. financial institutions are required to establish internal procedures to detect money laundered through these accounts.⁴⁵ In addition, financial institutions and broker-dealers are prohibited from maintaining correspondent accounts for foreign “shell banks,” i.e., banks that have no physical presence in their supposed home countries.⁴⁶ Institutions are subject to fines of up to \$1 million for violations of these provisions.⁴⁷

Title III allows for judicial review of assets seized due to suspicion of terrorist-related activities and the applicability of the “innocent owner” defense,⁴⁸ although the government is permitted in such cases to submit evidence that would not otherwise be admissible under the Federal Rules of Evidence, if following those rules would

³⁹ This Title is called the International Money Laundering Abatement and Anti-Terrorist Financing Act. For a more detailed discussion of Title III of the USA PATRIOT Act, see CRS Report No. RL31208, *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Title III of P.L. 107-56*, by M. Maureen Murphy.

⁴⁰ 18 U.S.C. § 2339B.

⁴¹ 31 U.S.C. § 5318A(a).

⁴² “Payable through accounts” are generally checking accounts marketed to foreign banks who would not otherwise have the ability to offer their customers access to the U.S. banking system.

⁴³ “Correspondent accounts” are bank accounts established with a U.S. financial institution to receive deposits or otherwise handle financial transactions of a foreign financial institution.

⁴⁴ 31 U.S.C. § 5318A(b).

⁴⁵ 31 U.S.C. § 5318(i).

⁴⁶ 31 U.S.C. § 5318(j).

⁴⁷ 31 U.S.C. § 5321(a)(7); 31 U.S.C. § 5322(d).

⁴⁸ An “innocent owner” under federal law is one who either did not know of the illegal activity or, upon learning of the illegal activity, did all that was reasonable to terminate use of the property in question. 18 U.S.C. § 983(d).

jeopardize national security.⁴⁹ Title III also allows for jurisdiction over foreign persons and financial institutions for prosecutions under sections 1956 and 1957 of Title 18 of the U.S. Code.⁵⁰

The USA PATRIOT Act permits forfeiture of property traceable to proceeds from various offenses against foreign nations.⁵¹ The act also permits forfeiture of accounts held in a foreign bank if that bank has an interbank account in a U.S. financial institution; in essence, law enforcement officials are authorized to substitute funds in the interbank account for those in the targeted foreign account.⁵² Forfeiture is also authorized for currency reporting violations and violations of BSA prohibitions against evasive structuring of transactions.⁵³

Title III requires each financial institution to establish an AML program, which at a minimum must include the development of internal procedures, the designation of a compliance officer, an employee training program, and an independent audit program to test the institution's AML program.⁵⁴ In order to allow for meaningful inspection of financial institutions' AML efforts, Title III requires financial institutions to provide information on their AML compliance within 120 hours of a request for such information by the Treasury Secretary.⁵⁵ Also, financial institutions applying to merge under the Bank Holding Act or the Federal Deposit Insurance Act must demonstrate some effectiveness in combating money laundering.⁵⁶ Financial institutions are allowed to include suspicions of illegal activity in written employment references regarding current or former employees.⁵⁷

Title III extends the SARs filing requirement to broker-dealers,⁵⁸ and gives the Treasury Secretary the authority to pass along SARs to U.S. intelligence agencies in order to combat international terrorism.⁵⁹ Anyone engaged in a trade or business who receives \$10,000 cash in one transaction must file a report with the Financial Crimes Enforcement Network (FINCEN) identifying the customer and specifying the amount and date of the transaction.⁶⁰ In addition, the USA PATRIOT Act makes it a crime to knowingly conceal more than \$10,000 in cash or other monetary instruments and

⁴⁹ P.L. 107-56, § 316 (codified at 18 U.S.C. § 983 note)

⁵⁰ P.L. 107-56, § 317.

⁵¹ 18 U.S.C. § 981(a)(1)(B).

⁵² 18 U.S.C. § 981(k).

⁵³ 31 U.S.C. § 5317(c).

⁵⁴ 31 U.S.C. § 5318(h).

⁵⁵ 31 U.S.C. § 5318(k)(2).

⁵⁶ 12 U.S.C. § 1842(c)(6); 12 U.S.C. § 1828(c)(11).

⁵⁷ 12 U.S.C. § 1828(w).

⁵⁸ P.L. 107-56, § 356 (codified at 31 U.S.C. § 5318 note).

⁵⁹ P.L. 107-56, § 358 (codified at 31 U.S.C. § 5319; 15 U.S.C. § 1681v).

⁶⁰ 31 U.S.C. § 5331. This is a separate requirement than the one codified at 31 U.S.C. § 5313.

attempt to transport it into or outside of the U.S. This offense carries with it imprisonment of up to five years, forfeiture of any property involved, and seizure of any property traceable to the violation.⁶¹

Significantly, the USA PATRIOT Act requires financial institutions to establish procedures so that these institutions can verify the identities and addresses of customers seeking to open accounts, and check this information against government-provided lists of known terrorists.⁶² Title III also allows the Treasury Secretary to promulgate regulations that prohibit the use of concentration accounts to disguise the owners of and fund movements in bank accounts.⁶³

While FINCEN was created by the Treasury Department in 1990,⁶⁴ under Title III, FINCEN has statutorily-based authority to conduct its duties within the Treasury Department.⁶⁵ Significantly, the act requires FINCEN to maintain a highly secure network so that financial institutions can file their BSA reports electronically.⁶⁶

The Intelligence Community⁶⁷

The Foreign Terrorist Asset Tracking Group (FTATG) is an autonomous interagency analytic group whose mission is to assess intelligence, and provide the National Security Council's Policy Coordinating Committee (PCC) "targeting reports" on individuals and groups suspected of financially supporting terrorists. Policy makers evaluate the reports, which contain background information on the target, and recommendations on possible action, including freezing assets belonging to the implicated party.

The FTATG staff currently consists of five temporarily detailed analysts from five agencies: the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), the National Security Agency (NSA), and the Central Intelligence Agency (CIA), and the Department of State (State). The Group is headed by a Director and a Deputy Director, although both positions are vacant.

Although housed at the Central Intelligence Director's (DCI) Counterterrorism Center (CTC) at CIA, FTATG is independent of the Center. Its analysts, however, rely principally on information furnished by the intelligence community and law enforcement agencies in making their assessments.

⁶¹ *Id.* at § 5332.

⁶² 31 U.S.C. § 5318(l).

⁶³ 31 U.S.C. § 5318(h)(3). "Concentration accounts" commingle the bank's funds with those in individual accounts, making it difficult to determine who owns specific funds and why funds are being moved.

⁶⁴ Treasury Order 105-08 (April 25, 1990).

⁶⁵ 31 U.S.C. § 310.

⁶⁶ P.L. 107-56, § 362 (codified at 31 U.S.C. § 310 note).

⁶⁷ This section was prepared by Al Cummings, FDT.

President Bill Clinton announced in May 2000 the creation of the Foreign Terrorist Asset Tracking Center (FTATC) as part of a \$300 million counterterrorism initiative, \$100 million of which was to be used to target terrorist financing.⁶⁸ Congress authorized funding in October 2000.⁶⁹

The initiative followed the disruption of various Osama Bin Laden-sponsored terrorist plots at the end of 1999 — a series of terrorist attacks planned for the Millennium against the U.S. and its interests. Although the plots were disrupted, Clinton Administration officials concluded that the CIA had been unable to find or disrupt al Qaeda's money flows,⁷⁰ and vowed in March 2000 to crack down on terrorist organizations and curtail their fund-raising.⁷¹

The NSC staff decided that one possible solution to targeting terrorism financing was to establish an all-source terrorist-financing intelligence analysis center, and NSC counterterrorism official Richard A. Clarke in March 2000 advocated that the center be established at the Department of the Treasury.⁷² Neither the Treasury Department nor the CIA, however, was willing to commit resources.⁷³ Before 9/11, the Treasury Department did not view terrorist financing as important enough to mention in its national strategy for money laundering.⁷⁴ Nevertheless, the Treasury Department was assigned the task of standing up the new center. National Security Advisor Condoleezza Rice said that she had determined by spring of 2001 that terrorist financing proposals were a good option, so Treasury continued to plan

⁶⁸ See Douglas Farah, "Blood From Stones: The Secret Financial Network of Terrorism," *Broadway Books*, New York, New York, May 2004, p. 193.

⁶⁹ See Myron Levin and Josh Meyer, "Officials Fault Past Efforts on Terrorist Assets," *Los Angeles Times*, Oct. 16, 2001.

⁷⁰ Farah, p. 186. According to the 9/11 Commission, although the CIA's Bin Laden unit had originally been inspired by the idea of studying terrorist financial links, "few personnel assigned to it had any experience in financial investigations. Any terrorist-financing intelligence appeared to have been collected collaterally, as a consequence of gathering other intelligence. This attitude may have stemmed in large part from the chief of this unit, who did not believe that simply following the money from point A to point B revealed much about the terrorists' plans and inventions. As a result, the CIA placed little emphasis on terrorist financing." See P. 184 of the Commission's report.

⁷¹ See The 9/11 Commission Report, *National Commission on Terrorist Attacks Upon the United States*, July 22, 2004, p. 185.

⁷² Shortly after Clarke and the NSC decided to advocate the create of FTATC, The National Commission on Terrorism (the National Commission is often referred to as the "Bremer Commission," after its chairman, L. Paul Bremer) recommended in June 2000 that the Secretary of the Treasury should create a unit within the Treasury Department's Office of Asset Control that blended the expertise of Treasury agencies and the CIA, FBI and NSA and was dedicated to the issue of terrorist financing. The Commission further recommended the Center should support more aggressive efforts by OFAC to freeze the assets of those individual or groups funding terrorists.

⁷³ Farah, p. 186.

⁷⁴ *Ibid.*

to establish an office for 24 financing analysts.⁷⁵ But the Treasury Department failed to follow through on the establishment of the FTATG.⁷⁶ On the eve of September 11, 2001, 16 months after its announced creation, nine months after President Bush took office, and despite post-9/11 declarations to the contrary, FTATC had funds appropriated, but no people hired, no security clearances, and no space to work.⁷⁷ Treasury officials, meanwhile, complained that CIA had adopted a posture of “benign neglect” toward the FTATC and characterized the CIA as believing that financial tracking had limited utility.⁷⁸

Three days after the September 11th terrorist attacks against the U.S., Treasury officials hastily stood up the FTATC,⁷⁹ under the Department of the Treasury’s Office of Foreign Asset Control (OFAC). A Treasury spokeswoman reportedly denied there was any undue delay in launching the Center, citing the logistical difficulties of bringing together representatives of a number of investigative agencies. Senator Charles E. Grassley, however, reportedly expressed concern as to whether the delay “is indicative of larger problems.”⁸⁰

The Center originally was comprised of the same member agencies as Operation Green Quest, a multi-agency, financial enforcement initiative that the Department of the Treasury announced on October 25, 2001, to identify, disrupt, dismantle and ultimately “bankrupt” terrorist networks and their sources of funding.⁸¹ Operation Green Quest was intended to serve as the operation and investigative arm for OFAC, FTATC and FINCEN.⁸² FTATC’s mission was to analyze individual and group targets identified through the Green Quest initiative.⁸³

In December 2002, the Senate Select Committee On Intelligence endorsed efforts to develop elements within the Intelligence Community designed to exploit financial intelligence and noted that the Treasury Department’s FTATC showed promise as a vehicle to address this need. But the Committee expressed concern about the Center regarding, “[the] extent it will function as an element of the

⁷⁵ 9/11 Commission Report, footnote 88, p. 505.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ See Myron Levin and Josh Meyer, “Officials Fault Past Efforts on Terrorist Assets,” *Los Angeles Times*, Oct. 16, 2001.

⁸⁰ *Ibid.*

⁸¹ Green Quest was led by the following Treasury Department agencies: U.S. Customs Service Department of the Treasury agencies) the Internal Revenue Service, the Financial Crimes Enforcement Network (FINCEN), the Office of Foreign Assets Control, and the Secret Service. (Since then, the newly created Department of Homeland Security has absorbed some of those agencies). FBI and Department of Justice representatives also participated in Green Quest.

⁸² See U.S. Customs press release October 25, 2001, announcing Operation Green Quest.

⁸³ See prepared comments of Treasury Undersecretary James Garule, October 25, 2001, announcing the Green Quest initiative.

Intelligence Community, has been coordinated adequately with the Director of Central Intelligence nor reviewed by this Committee.”⁸⁴ The Committee directed the DCI and the Treasury Secretary to prepare jointly a report “assessing the feasibility and advisability of establishing an element of the federal government to provide for effective and efficient analysis and dissemination of foreign intelligence related to the financial capabilities and resources of international terrorist organizations. The report should include an assessment of the FTATC as a vehicle for addressing such a need and, if appropriate, a plan for its continued development.”⁸⁵

The following year, the Senate intelligence committee complained that the Executive Branch had failed to provide the report to the Committee,⁸⁶ noting that Congress had by statute as part of the USA PATRIOT Act again requested that the DCI and Treasury Secretary provide a report on FTATC.⁸⁷

The congressional intelligence committees in the FY2003 intelligence bill established the FTATC under the direction of the DCI, and placed the Center within the CIA.⁸⁸

By the time the FY2003 intelligence authorization bill had been signed into law in November 2002, the Bush Administration already had moved FTATC from the Treasury Department’s OFAC to CIA, housing it in the DCI’s counterterrorism center (CTC), but keeping it independent of CTC. FTATC also was renamed the Foreign Terrorist Asset Tracking Group (FTATG) by the PCC. Its first two directors were ICE detailees, with the position now vacant. Since the Center was moved from under the control of the Treasury Department’s OFAC, Treasury has not detailed analysts to FTATG. FINCEN also does not currently detail analysts to FTATG. Although FTATG historically developed its own targets, its five analysts now serve as targeting research arm of the PCC, assessing targets provided by the PCC.

There is a growing debate within law enforcement circles over how best to curtail terrorist financing. On one side are those who advocate that U.S. agencies freeze more assets. On the other are those who assert that it is more important to follow the money trail. Among those in the latter camp are the members of the 9/11 Commission, who argue that the information about terrorist money helps authorities

⁸⁴ See Senate Report 107-63, p. 10.

⁸⁵ Ibid, pp. 10-11.

⁸⁶ See Senate Report 107-49, p. 18.

⁸⁷ See P.L. 107-56, Section 906.

⁸⁸ See P.L. 107-306, Section 341. The act also requires that the Treasury Secretary submit a semiannual report describing operations against terrorist financial networks, noting the total number of asset seizures and designations against individuals and organizations found to have financially supported terrorism; the total number of applications for asset seizure and designations of individuals and groups suspected of financially supporting terrorist activities, that were granted, modified or denied; the total number of physical searches of those involved in terrorist financing; and whether financial intelligence information seized in these cases has been shared within the Executive Branch.

to understand the terrorist networks, search them out, and disrupt their operations.⁸⁹ “[T]rying to starve the terrorists of money is like trying to catch one kind of fish by draining the ocean,” the Commission asserted in its recent report.⁹⁰

But some U.S. officials, while not disagreeing with the Commission, contend that the U.S. has to adopt both approaches, and that with regard to freezing assets, has to become even more aggressive since attacking financial sources affects the long-term ability of Al Qaeda to mount terrorist attacks.⁹¹

In the meantime, the PCC is reviewing the FTATG’s mission and is expected to issue new guidelines governing the Group’s operations.

Whether its mission is to help freeze assets of those individuals or organizations funding terrorism, or to “follow the money” in hopes of learning more about terrorist activities, with five analysts FTATG appears to have limited resources to do either. One could question the commitment to FTATG and its mission given that FTATG has operated without a director for five months, and no longer has OFAC or FINCEN analysts within its ranks.

A further question is whether the FTATG is focusing enough attention on the contention that there is trade in diamonds in West Africa by Al Qaeda and other terrorist groups (i.e., that they are using diamonds to fund terrorist activities).⁹² Some argue that the Intelligence Community (IC) has dismissed the reporting on terrorist ties to diamond trading in that area. They assert that the IC is failing to recognize the national security threat posed by armed groups, operating beyond state control, that are now the de facto rulers of growing swaths of sub-Saharan Africa, Asia and Latin America. The IC, they assert, also is failing to focus adequate resources on the now-identifiable presence of al Qaeda and other terrorist groups such as Hezbollah in places such as West Africa, where they finance their activities. The terrorist groups

⁸⁹ See the 9/11 Commission Report, National Commission on Terrorist Attacks Upon the United States, July 22, 2004, p. 382.

⁹⁰ Ibid.

⁹¹ Sullivan, Aug. 2, 2004.

⁹² See Douglas Farah, “Al Qaeda’s Growing Sanctuary,” *Washington Post*, July 14, 2004, p. A19. With regard to the West Africa diamond trade, the 9/11 Commission took the opposite view, suggesting that it had seen no persuasive evidence that al Qaeda funded itself by trading in African conflict diamonds. See p. 171 of the Commission’s report. See also *Overview of the Enemy: Staff Statement No. 15*, of the National Commission on Terrorist Attacks Upon the United States (Keane Commission), pp. 9-10. This statement suggests that although “...al Qaeda frequently moved its money by *hawala*, an informal and ancient trust-based system for moving funds...no persuasive evidence exists that al Qaeda relied on the drug trade as important source or revenue, or funded itself through trafficking in diamonds from African states engaged in civil wars.” Douglas Farah questions the Commission’s conclusion, citing what he characterizes as an extensive record reflecting the contrary. See Douglas Farah website at [<http://www.DouglasFarah.com/blog/>].

are betting that Western intelligence services do not have the capacity, resources or interest to track their activities there.⁹³

The Interagency Process⁹⁴

The National Security Council (NSC) is responsible for the overall coordination of the interagency framework for combating terrorism including the financing of terrorist operations. Given divergent concerns among various departments and agencies only the NSC may be in a position to choose among alternative approaches and make tactical decisions when disagreements emerge. The NSC staff inevitably has a significant influence on the decisionmaking process although great reliance is placed on interagency Policy Coordination Committees (PCCs) some of which are headed by departmental officials and some by the National Security Adviser.

A PCC specifically on terrorist financing was not included in the list of PCCs published by the White House in February 2001, but media accounts indicate that a PCC for this issue was established in the aftermath of the events of September 11.⁹⁵ The General Counsel of the Treasury Department has been designated the leader of the interdepartmental group. Treasury undoubtedly has a central role in halting terrorist financing, but some observers question whether a Treasury General Counsel is the best choice for the coordinating diplomatic and intelligence efforts in this area. Accordingly, it has been argued that a new position on the NSC staff should be established — a special assistant to the President for combating terrorist financing. The individual, who would not have departmental responsibilities, would chair meetings of the PCC on terrorist financing and would be assisted by a team of directors on the NSC staff in coordinating and directing all Federal efforts on the issue. This team would “focus its attention on evaluating the all-source intelligence available on terrorist organizations, conducting link analysis on the organizations with information and technical intelligence available from other departments and agencies, and developing tactics and strategies to disrupt and dismantle terrorist financial networks.”⁹⁶

There are, however, arguments that can be made against establishing new positions on the NSC staff. Size of the White House staff and expanding the span of control of the National Security Adviser are one set of issues. Another question is the desirability of having tactics and strategies developed by the NSC staff rather than operating departments. For instance, the Tower Board established in the wake of the Iran-Contra affair in the Reagan Administration, recommended that “As a general matter, the NSC Staff should not engage in the implementation of policy or

⁹³ Ibid.

⁹⁴ This section was prepared by Richard Best/FDT.

⁹⁵ Lee S. Wolosky, “Breakdown: the Challenge to Eliminating Al Qaeda’s Financial Networks,” in *Beyond the Campaign: the Future of Countering Terrorism*, ed. by Bryan Lee Cummings, (New York: Council for Emerging National Security Affairs, 2004), p. 150.

⁹⁶ Council on Foreign Relations, Report of an Independent Task Force, *Terrorist Financing*, New York, 2002, pp. 32-33.

the conduct of operations. This compromises their oversight role and usurps the responsibilities of the departments and agencies.”⁹⁷ Arguably, the best approach would have the PCC develop strategies against terrorist financing, resolve inter-departmental disagreements on tactics, and bring differences to the attention of the NSC for resolution. It may be, however, that the perspectives of agencies and departments are so different that there need to be arrangements more permanent than regular PCC meetings to maintain requisite coordination. Others would argue that while a separate staff within the larger NSC staff may not be necessary, it would be better to have the PCC headed by the National Security Adviser or her/his designee rather than an official with other important responsibilities and loyalties.

Financial Regulators and Institutions⁹⁸

The nation’s financial institutions, their regulators, and certain offices within the U.S. Department of the Treasury share primary responsibility for providing information on financial transactions for the purpose of detecting, disrupting, and preventing the use of the nation’s financial system by terrorists and terrorist organizations. Historically, such information has aided law enforcement authorities in dealing with money laundering to hide the gain from crimes, and is now being used to track possible terrorist financing.

The Offices within the Department of the Treasury. Offices within Treasury include the Office of Terrorism and Financial Intelligence (TFI, formerly the Executive Office for Terrorist Financing and Financial Crimes), established in April 2004. TFI is charged with developing and implementing strategies to counter terrorist financing and money laundering both domestically and internationally. It participates in developing regulations in support of both the BSA and USA PATRIOT Acts. It also represents the United States at international bodies that focus on curtailing terrorist financing and financial crime, including the Financial Action Task Force (FATF) whose “Forty Recommendations” and “Eight Special Recommendations” are the basic framework for anti-money laundering and terrorist financing efforts internationally. Two offices with anti-terrorist financing responsibilities within TFI are the Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FINCEN).

FINCEN originated in the Treasury in 1990 as the data-collection and analysis bureau for the BSA. It provides a government-wide, multi-source intelligence network under which it collects SARs and CTRs from reporting financial institutions (with assistance from the IRS), tabulates the data in a large database that has been maintained since 1996, and examines them to detect trends and patterns that might suggest illegal activity. FINCEN then reports what it finds back to the financial community as a whole to aid further detection of suspicious activities. There have

⁹⁷ U.S., President’s Special Review Board, *Report*, February 26, 1987, p. V-4. The Board consisted of former Senators John Tower and Edmund Muskie, and Brent Scowcroft, a previous (and future) National Security Adviser.

⁹⁸ This section was prepared by Walter Eubanks and William D. Jackson/G&F.

been seven *SAR Activity Reviews* issued since October 2000, the most recent dated August 2004. Such reports are a part of FINCEN's outreach and education efforts on behalf of financial regulators and law enforcement agencies. While FINCEN has no criminal investigative or arrest authority, it uses its data analysis to support investigations and prosecutions of financial crimes, and refers possible cases to law enforcement authorities when warranted. It also submits requests for information to financial institutions from law enforcement agencies in the conduct of criminal investigations. FINCEN reports 285 such requests to more than 33,000 institutions between mid-February 2003 and July 2004.

According to Treasury testimony, a terror hotline established by FINCEN after 9/11 resulted in 853 tips passed on to law enforcement through April 2004. In the same time period, financial institutions filed 4,294 SARs involving possible terrorist financing, of which 1,866 had possible terrorist financing as their primary impetus.⁹⁹

The Inspector General (IG) of the Department of the Treasury has conducted a series of audits of the FINCEN SAR database and raised some potentially troubling issues. The IG found that the database lacks critical information and is filled with inaccuracies. An analysis of a sample of 2,400 SARs, for example, determined that most of the reports did not detail the specific actions that led to suspicion, did not give a location for possible illegal transactions, or omitted the narrative description required in the reports entirely. As recently as June 2004, the IG testified that subsequent audits revealed little or no improvement.¹⁰⁰

Subsequently, FINCEN announced it would collect information from the financial regulators and others responsible for BSA compliance on their examination procedures, cycles and resources; on any significant deficiencies in reporting by financial institutions; and other data including both formal and informal actions taken by regulators to correct reporting failures by financial institutions. FINCEN has also created an internal Office of Compliance to support the work of the financial regulators.

The Office of Foreign Assets Control is designed primarily to administer and enforce economic sanctions against targeted foreign countries, groups, and individuals, including suspected terrorists, terrorist organizations, and narcotics traffickers. OFAC acts under general presidential wartime and national emergency powers as well as legislation, to prohibit financial transactions and freeze assets subject to U.S. jurisdiction. OFAC also has responsibility for listing those persons, groups, or countries whose transactions are to be blocked or assets frozen by financial institutions. OFAC has close working relations with the financial regulatory

⁹⁹ Testimony of Daniel L. Glaser, Director, Executive Office for Terrorist Financing and Financial Crimes, U.S. Department of the Treasury, before the House Government Reform Committee, Subcommittee on Criminal Justice, Drug Policy and Human Resources, May 11, 2004. [<http://www.treas.gov/press/releases/js1539.htm>]

¹⁰⁰ Testimony of Dennis S. Schindel, Acting Inspector General, U.S. Department of the Treasury, before the House Committee on Financial Services, Subcommittee on Oversight and Investigations, June 16, 2004.

community and maintains telephone “hotlines” through which it receives real-time guidance on in-progress financial transactions. OFAC also works closely with the Federal Bureau of Investigation, and with the Department of Commerce’s Office of Export Enforcement, and cooperates with the United Nations in imposing UN sanctions on foreign governments.

According to Treasury Secretary John Snow, OFAC has frozen assets of 29 entities linked to the Al Qaeda network since 9/11, and has helped identify between two and three hundred additional entities and individuals as possible terrorists. The work of OFAC is credited with freezing \$139 million in terrorist assets worldwide since 9/11. The most recent IG audit was completed in April 2002 and concluded that OFAC is limited because of its reliance on regulators’ examinations of the financial institutions that supply data under the BSA. The IG recommended that Treasury inform Congress that OFAC lacked sufficient authority to ensure financial institutions comply with foreign sanctions after finding instances in which institutions either did not have databases on foreign sanctions, or did not update them. Further, some institutions did not routinely follow guidance in processing rejected financial institutions and did not report blocked assets.¹⁰¹

The Financial Institution Regulators. The Treasury delegates responsibility for examining financial institutions for compliance with the BSA to the financial regulators of those institutions. These regulators are already responsible for the safety and soundness examinations of the institutions they supervise, and generally conduct their BSA examinations concurrently with those routine inspections. When there is cause do so, however, any of the regulators may carry out a special BSA examination.

The primary regulators for depository financial institutions are all participants in the Federal Financial Institutions Examination Council (FFIEC). FFIEC prescribes uniform principles, standards, and reporting forms for all banking and other depository institution examinations. It also works to promote uniformity in all depository supervision. As a result, all the depository financial institutions follow similar procedures in enforcing the BSA. FFIEC is currently forming an additional Working Group to enhance coordination of regulatory agencies, law enforcement, and private financial institutions to strengthen current arrangements. All, including the non-depository regulators, are also part of the National Anti-Money Laundering Group (NAMLG), first formed in 1997 by the Office of the Comptroller of the Currency to set up guidelines for depositories to follow with respect to training of employees to detect illegal transactions, a system of internal controls to assure compliance, independent testing of compliance, and daily coordination and monitoring of compliance. The continuing purpose of the group, which also includes the Department of Justice and banking industry trade groups, is to identify institutions at high risk of being used for money laundering or terrorist financing.¹⁰²

¹⁰¹ Schindel, page 4.

¹⁰² Financial institutions that are not federally regulated, such as check cashers, money transmitters, issuers of travelers’ checks, casinos, and other gaming institutions, are overseen by the Small Business and Self-Employed Taxpayers Division of the Internal (continued...)

The Office of the Comptroller of the Currency is the regulator for just over 2,000 nationally chartered banks and the U.S. branches and offices of foreign banks. The OCC conducts on-site examinations of each national bank at least three times within every two-year period. Along with loan and investment portfolios, they review internal controls, internal and external audits, and BSA compliance. According to the OCC, they conducted about 1,340 BSA examinations of 1,100 institutions in 2003, and nearly 5,000 BSA examinations of 5,300 institutions since 1998.¹⁰³

When the OCC finds violations or deficiencies in filing SARs and CTRs, it may take either formal or informal action. Not generally made public, informal actions result when examiners identify problems that are of limited scope and size, and when they consider managements as committed to and capable of correcting the problems. Informal actions include commitment letters signed by institution management, or memoranda of understanding, and matters requiring board attention in the examination reports. Formal enforcement actions are made public because they are more severe. Such actions include cease and desist orders and formal agreements requiring the institution to take certain actions to correct deficiencies. Formal actions may also be taken against officers, directors and other individuals, including removal and prohibition from participation in the banking industry, and civil fines. From 1998 through 2003, the OCC issued a total of 78 formal enforcement actions based, at least in part, on BSA problems. The number of informal enforcement actions has been characterized as “countless.”¹⁰⁴ The most recent case of severe BSA problems involved Riggs Bank. In this case, according to the OCC, deficiencies had been noted for many years before a \$25 million penalty was imposed in May 2004.

The Federal Reserve System (Fed) supervises about 950 state-chartered commercial banks that are members of the system and more than 5,000 bank holding companies and financial holding companies. Along with the OCC, it also supervises some international activities of national banks. The Fed uses both on-site examination and off-site surveillance and monitoring in its supervision process. Each institution is to be examined on-site every 12 to 18 months. In-house examiners are to examine larger institutions continuously. The Board of Governors of the Fed coordinates the examination and compliance activities of the 12 regional banks. In early 2004, the Fed created a new section within the Board’s Division of Banking Supervision and Regulation — the Anti-Money Laundering Policy and Compliance Section — to improve control.

According to the Fed, from 2001 through 2003, they took 25 formal enforcement actions against financial institutions under the BSA. In every case, the examination process identified violations that were severe enough to require

¹⁰² (...continued)
Revenue Service.

¹⁰³ Testimony of Deputy Chief Counsel Daniel P. Stipano, Office of the Comptroller of the Currency, Subcommittee on Oversight and Investigations, Committee on Financial Services of the U.S. House of Representatives, June 2, 2004. [<http://financialservices.house.gov/media/pdf/060204ds.pdf>]

¹⁰⁴ Stipano, page 9.

action.¹⁰⁵ Recent public action involved a \$100 million fine against UBS for transmitting U.S. currency to trade-sanctioned nations through the Fed of New York's own systems.¹⁰⁶ It also sanctioned the holding company for Riggs Bank by mandating greater compliance; another financial holding company subsequently bought the operations of Riggs and is retiring the bank's name.¹⁰⁷

The Federal Deposit Insurance Corporation (FDIC) regulates about 4,800 state-chartered commercial banks and 500 state-chartered savings associations that are not members of the Fed. They also insure deposits of the remaining 4,000 depository institutions without regulating them. The FDIC examines its supervised institutions about once every 18 months. The FDIC also serves as the point of contact for FINCEN to communicate identities of suspected terrorists to banking regulators and institutions.

Since 2000, the FDIC has conducted almost 1,100 BSA examinations and from 2001, has issued formal enforcement actions (cease and desist orders) against 25 institutions and bans or civil fines against three individuals for violations. The FDIC also has taken 53 informal actions since 2001. The IG of the FDIC has audited the FDIC twice, covering the period 1997 through September 2003, to assess the FDIC's BSA examinations, and its implementation of the USA PATRIOT Act. The IG generally concluded that FDIC examiners have insufficient guidance for BSA examinations, which were inadequate. During the audit period, 2,672 institutions were cited for BSA failures to report, and 458 had repeat violations. Further many citations were for serious violations such as a failure to comply with record-keeping and reporting requirements for CTRs.¹⁰⁸ While some transactions of over \$10,000 are exempt — such as regular and routine business, including meeting payroll or depositing receipts, by known customers — the citations involved unambiguous requirements to report. In 30% of the cases, the FDIC was found to have waited until the next examination to follow up on BSA violations and taken more than a year in 71% of the cases to act, with many violations taking five years before the FDIC acted.

The Office of Thrift Supervision (OTS) supervises about 950 federally chartered savings associations, savings banks, and their holding companies (thrifts). Like the OCC, the OTS is located within, but is independent of the Treasury. The OTS is to conduct on-site examinations of each institution at least three times every

¹⁰⁵ Testimony of Susan S. Bies, Member, Board of Governors of the Federal Reserve System, Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, June 3, 2004. [http://banking.senate.gov/_files/bies.pdf]

¹⁰⁶ R. Christian Bruce, "Fed Fines Switzerland's UBS for Illegal Dollar Transactions," *BNA's Banking Report*, May 17, 2004.

¹⁰⁷ Karen L. Warner, "Riggs Bank Disregarded AML Obligations; Regulators Lax on Deficiencies, Report Says," *BNA's Banking Report*, July 19, 2004.

¹⁰⁸ Testimony of Davi M. D'Agostino, Director of Financial Markets and Community Investment of the United States General Accounting Office, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, June 3, 2004. [http://banking.senate.gov/_files/dagostino.pdf]

two years. Data on actions taken are from the Treasury IG's audit of OTS actions covering a period from January 2000 through October 2002. During that time, examiners found substantive problems at 180 thrifts, and took written actions against 11. According to the IG, in five cases the action was not timely, was ineffective, and did not even address all violations found. The IG also took exception to the extent to which the OTS relied on moral suasion instead of money penalties to gain compliance: in a sample of 68 violations, for example, the OTS took such actions in 47 cases but failed to make any positive difference in compliance in 21 of those cases.

The National Credit Union Administration (NCUA) currently regulates 9,369 federally chartered credit unions and another 3,593 federally insured, state-chartered credit unions. Most credit unions are small and considered to have limited exposure to money laundering activities. In at least one case, however, penalties were assessed against a credit union for CTR deficiencies. In 2000, the Polish and Slavic Federal Credit Union in New York City was assessed \$185,000 for willful failure to file CTRs and improperly granting exemptions from such filings for some customers.¹⁰⁹

In 2003, the NCUA examined 4,400 credit unions and participated with state regulators in another 600 examinations of state-chartered institutions. They found 334 BSA violations in 261 credit unions. Most deficiencies were inadequate written policies, inadequate customer identification, or inadequate currency reporting procedures. NCUA reported that 99% of violations were corrected during or soon following the on-site examinations. NCUA actions are generally informal but may involve memoranda of understanding.¹¹⁰

The Securities and Exchange Commission (SEC) regulates to protect investors against fraud and deceptive practices in securities markets. It also has authority to examine institutions it supervises for BSA compliance. This covers securities markets and exchanges, securities issuers, investment advisers, investment companies, and industry professionals such as broker-dealers. The SEC supervises more than 8,000 registered broker-dealers with approximately 92,000 branch offices and 67,500 registered representatives. The depth and breadth of the securities markets are such that they could arguably prove to be an efficient mechanism for money laundering.

The SEC's approach to BSA monitoring and enforcement is a joint product of the NAMLG and modified from that used by depository institution regulators. Much of the securities industry is overseen by self-regulating organizations (SROs), such as the New York Stock Exchange. Thus, most examinations are carried out jointly by the SEC's Office of Compliance Inspections and Examinations (OCIE) and the relevant SRO. The SEC does not make public its findings of BSA violations. Agency efforts are focused on educating the securities industry on its compliance responsibilities. This may be in part because compliance rules for the industry are

¹⁰⁹ Ibid.

¹¹⁰ Testimony of JoAnn M. Johnson, Chairman of the National Credit Union Administration, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, June 3, 2004. [http://banking.senate.gov/_files/johnson.pdf]

relatively recent. For example, FINCEN and the SEC released specific regulations for customer identification programs for mutual funds in June 2003.

The Commodity Futures Trading Commission (CFTC) protects market users and the public from fraud and abusive practices in markets for commodity and financial futures and options. The CFTC delegates BSA examinations to its designated self-regulatory organizations (DSROs), of which the most prominent are the National Futures Association (NFA), the Chicago Board of Trade, and New York Mercantile Exchange. NFA membership covers more than 4,000 firms and 50,000 individuals. The regulatory process generally starts at registration, when the SRO screens firms and individuals seeking to conduct futures business. The DSROs monitor business practices and, when appropriate, take formal disciplinary actions that could prohibit firms from conducting any further business. Covered businesses include all registered futures commission merchants, “introducing brokers,” commodity pool operators, and commodity trading advisers, who are required to report suspicious activity and verify the identity of customers, as well as monitor certain types of accounts involving foreigners.

According to the CFTC, in 2003, the NFA conducted 365 examinations of the 180 futures commission merchants and 605 introducing brokers. Those examinations resulted in 238 audit reports of which 54 reflected anti-money laundering deficiencies at nine merchants and 45 brokers. Primary deficiencies cited were failures to comply with annual audit and training requirements.¹¹¹

Internal Revenue Service¹¹²

In order to help finance its operations and a multitude of defense and non-defense programs, the federal government levies income taxes, social insurance taxes, excise taxes, estate and gift taxes, customs duties, and miscellaneous taxes and fees. The federal agency responsible for administering all these taxes and most of these fees, except customs duties, is the Internal Revenue Service (IRS). In discharging that responsibility, the IRS receives and processes tax returns and related documents, processes payments and refunds, enforces compliance with tax laws and regulations, collects delinquent taxes, and provides a variety of services to taxpayers mainly intended to answer questions, help them understand their rights and responsibilities under the tax code, and resolve problems in ways that seek to avoid protracted and costly litigation.

In light of this mission, some may find it surprising that the IRS also is involved in current efforts by the federal government to detect, disrupt, and prevent the flow of funds to international terrorist groups, especially those expressing antipathy toward the United States. This involvement is rooted in the agency’s responsibility for tax law enforcement and might best be described as providing critical analytical and resource support in investigations (many of which involve other federal agencies)

¹¹¹ CFTC communication with CRS August 2004.

¹¹² This section was prepared by Gary Guenther/G&F

focused on money laundering and the diversion of funds from tax-exempt charities. Such a role takes advantage of the deep reservoir of expertise and experience the agency has amassed as the primary enforcer of federal tax laws and the primary investigator of criminal violations of those laws and laws dealing with the detection and prevention of money laundering. For the IRS, money laundering has long represented a possible avenue for tax evasion.

IRS's contribution to the government's campaign to detect and eliminate the sources of international terrorist financing draws mostly on resources tied to tax law enforcement. By all available accounts, three operating divisions are involved to varying degrees in this campaign: Criminal Investigation (CI), the Small Business and Self-Employed Taxpayers Division (SBSE), and the Tax-Exempt and Government Entities Division (TEGE).

The lead division in resource commitment seems to be CI, whose main function is to investigate possible criminal violations of the tax code. In recent decades, Congress and the Treasury Department have taken steps to expand the CI's scope of authority to include investigations of possible violations of anti-money laundering and financial reporting statutes. As a result, the division has acquired the capability to counter the attempts of individuals and organizations (including charities) to evade taxes on legal income or to launder money obtained through illicit activities with the use of nominees, cash, multiple bank accounts, layered financial transactions involving multiple entities, and the movement of funds offshore. Recent developments suggest that efforts are underway to adapt this capability to the special requirements of tracing and dismantling the sources of terrorist financing.

Among other responsibilities, the SBSE and TEGE Divisions enforce compliance with certain sections of the tax code; the SBSE also enforces compliance by certain non-banking financial institutions with the reporting requirements of the Bank Secrecy Act of 1970 (BSA). Some employees from both divisions are involved in various ways with terrorist financing investigations. SBSE agents conduct examinations of money service businesses to ensure that they comply with reporting requirements under the Bank Secrecy Act of 1970, and they refer possible violations to CI and Treasury's Financial Crimes Enforcement Network (FINCEN) for investigation. Some of the cases they refer may be related to terrorist financing. Additionally, agents from the Exempt Organizations branch (EO) of the TEGE Division assist other government agencies in their investigations of charities that may have diverted funds to support international terrorist groups. In FY2004, the EO is undertaking an educational program to help charities put in place effective internal controls to prevent the unintended diversion of assets to terrorist groups. And in FY2005, the EO hopes to receive funding to establish the Exempt Organization Fraud and Financial Transactions Unit, whose main tasks would include combating the diversion of charitable assets to fund terrorist activities and increasing the data on the flow of funds from donors to charitable organizations available to the CI and other law enforcement agencies.¹¹³

¹¹³ See *IRS Strategic Plan 2005 - 2009*, available at [http://www.irs.gov/pub/irs-utl/strategic_plan_05-09.pdf]

Undergirding the IRS's contribution are the skills, education, and technology possessed by CI special agents and certain financial information the agency collects under a variety of tax and anti-money laundering statutes.

CI special agents must have academic backgrounds in accounting and business finance before they undergo rigorous training in criminal investigation techniques, forensic accounting, and financial investigations. Some also receive specialized training in methods of combating terrorist financing from prosecutors with the Department of Justice's Counterterrorism Section. In FY2004, the IRS employs 2,750 special agents, of whom about 100 serve as computer investigative specialists trained to use special equipment and techniques to preserve digital evidence and to recover financial data. Recent congressional testimony indicates that a total of 140 special agents and 20 support personnel currently are assigned to work on counterterrorism investigations.¹¹⁴ Twelve of these agents (along with one agent from the TEGE Division) are involved in a pilot anti-terrorism initiative taking place at the Garden City Counterterrorism Lead Development Center in Garden City, NY. The initiative, which is directed by the CI, seeks to supply research and project support to anti-terrorist financing investigations being conducted by the Joint Terrorism Task Forces (JTTF) led by the FBI or by CI special agents. Special agents have focused their investigations on the members of known terrorist groups who might have violated tax, money-laundering, and currency laws and individuals connected to tax-exempt organizations who might be raising funds to support terrorist groups. Available information suggests that they excel at unraveling complex financial transactions by analyzing key pieces of detailed financial information and assembling them in the manner of a jigsaw puzzle to form a coherent picture emphasizing expenditures, life-style changes, and acquisition of assets.

Owing to its enforcement authority, the IRS has direct access to financial information that can be especially useful in detecting and tracking tax evasion and various financial crimes, including the movement of illegally obtained money through domestic financial institutions to international terrorist groups. Under Section 6050I of the Internal Revenue Code, firms not covered by the BSA must report to the IRS customer purchases of more than \$10,000 paid in cash.¹¹⁵ Under Section 5314 of the BSA, U.S. residents and citizens and any firms with domestic business operations having transactions with foreign financial institutions must file a form known as the Report of Foreign Bank and Financial Accounts (FBAR) with the IRS giving important details about those transactions. And since December 1992, the IRS has had the authority to monitor and enforce compliance with the BSA reporting requirements by non-banking and financial institutions not overseen by other federal agencies; these institutions include money service businesses, casinos,

¹¹⁴ See written statement of Nancy Jardini, Chief of the CID, submitted to the Subcommittee on Oversight and Investigations of the House Committee on Financial Services for a hearing held on June 16, 2004. Available at [<http://www.financialservices.house.gov/medial/pdf/061404nj.pdf>], visited on July 22, 2004.

¹¹⁵ The BSA requires banks and non-bank financial institutions such as casinos and check-cashing operations to file reports on currency transactions exceeding \$10,000. Such information is intended to help the IRS enforce compliance with the tax code and make it possible to detect and prevent attempts to launder money obtained through illegal activities.

and non-federally insured credit unions. The IRS is also responsible for processing and storing electronically BSA documents collected by all federal agencies (including FBARs, currency transactions reports, and suspicious activity reports) in a computer data base known as the Currency Banking Retrieval System. Although all these documents are made available to other law enforcement and regulatory agencies, the IRS appears to be the largest user. According to recent congressional testimony by Nancy Jardini, Chief of the CID, data culled from BSA documents have played important roles in 26% of the 150 investigations into terrorist financing being conducted by special agents as of June 2004.¹¹⁶

The IRS shares its investigative resources with a variety of federal agencies as part of the effort to detect and thwart the flow of funds to international terrorist groups. It is in the early stages of forging a working relationship with the recently formed Office of Terrorism and Financial Intelligence in the Treasury Department, and it has established a cooperative relationship with Treasury's Office of Foreign Assets Control, FINCEN, and Working Group on Terrorist Financing and Charities. In addition, the IRS is taking part in numerous inter-agency initiatives whose aims include tracking and disrupting the flow of funds to international terrorist groups. Among the noteworthy initiatives are the Organized Crime Drug Enforcement Task Force Program, the Defense Intelligence Agency Center, the Anti-Terrorism Advisory Council created by the Attorney General, the FBI's JTTF and Terrorist Financing Operations Section, the High Intensity Money Laundering and Related Financial Crime Area Task Forces, and the Terrorist Finance Working Group led by the State Department. Besides the FBI, the federal law enforcement agencies involved in these initiatives include the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Drug Enforcement Agency; and Immigration and Customs Enforcement.

There is no evidence that the IRS has developed a formal, systematic, publicly accessible method for evaluating the cost-effectiveness of its contributions to the campaign against terrorist financing. The lack of such a method makes it difficult to address some important policy issues. It is not clear, for example, to what extent the agency's input complements or duplicates work done by other agencies, yields financial information that results in the elimination of specific sources of terrorist financing, or can be regarded as a worthwhile investment of public resources. Nonetheless, the IRS does make an effort to keep track of the number of anti-terrorist financing investigations its agents are involved in and their outcomes. According to recent congressional testimony by Dwight Sparlin, the Director of Operations, Policy, and Support for CI, between October 1, 2000, and early May 2004, the CI conducted 372 such investigations "in partnership with other law enforcement agencies."¹¹⁷ Of these, over 100 led to criminal indictments; another 120 were referred to the Justice

¹¹⁶ See written statement of Nancy Jardini submitted to the Senate Banking, Housing, and Urban Affairs Committee for a hearing held on April 29, 2004. Available at [http://www.banking.senate.gov/_files/jardini.pdf], visited on July 22, 2004.

¹¹⁷ See written statement of Dwight Sparlin submitted to the Subcommittee on Criminal Justice, Drug Policy, and Human Resources of the House Government Reform Committee for a hearing held on May 11, 2004. Available at [<http://www.reform.house.gov/CJDPHR>], visited on July 22, 2004.

Department for prosecution; and the remaining 150 or so were still being worked on by CI special agents.

In recent congressional testimony, some senior IRS officials have stated that combating terrorist financing is one of the agency's highest priorities. Yet the current allocation of funds among major IRS operations does not appear to reflect such a commitment. In FY2004, the IRS is receiving \$10.184 billion in appropriated funds. Of this total, \$4.171 billion (or 41%) is set aside for tax law enforcement, the budget account from which the IRS funds most of its contribution to the federal government's campaign to seek out and destroy terrorist financing networks. While there is no specific item in the IRS budget for resources dedicated to countering terrorist financing, the agency estimates that its spending for this purpose in FY2004 falls somewhere between \$20 and \$25 million.¹¹⁸ The upper end of the range amounts to 0.6% of its budget for tax law enforcement and slightly more than 0.2% of its total budget.

Departments of Homeland Security and Justice

Bureau of Customs and Border Protection (CBP)¹¹⁹

The Bureau of Customs and Border Protection (CBP) is the principal agency responsible for the security of the nation's borders. CBP was established March 1, 2003 with the creation of Department of Homeland Security (DHS). CBP is primarily composed of the inspection staffs of the legacy U.S. Customs Service, Immigration and Naturalization Service (INS), and the Animal and Plant Health Inspection Service (APHIS). CBP's primary mission is interdicting illicit or illegal cross-border traffic while efficiently processing the flow of legitimate or low-risk traffic across the border. CBP enforces more than 400 laws and regulations on behalf of many federal agencies, including those that relate to terrorist financing.

Role in Terrorist Financing. CBP's role in the national effort to combat terrorist financing is confined to its inspection and interdiction activities along the border at or between ports of entry. In this role CBP intercepts illicit material and contraband illegally entering or exiting the country. CBP interdicts inbound illicit currency during the course of its inspection operations at and between ports of entry. To prevent illicit financial proceeds from reaching terrorist or criminal groups outside the U.S., CBP has developed two outbound programs that specifically relate to terrorists and terrorist financing: the Currency Program, and the EXODUS program, run by CBP's Outbound Interdiction Security staff.

The mission of CBP's Outbound Interdiction and Security activities is to enforce U.S. export laws and regulations. This mission includes (among other things): interdicting illegal exports of military and dual-use commodities; enforcing sanctions

¹¹⁸ The estimates were obtained through an e-mail exchange with Floyd Williams of the IRS Congressional Liaison Office on July 22, 2004.

¹¹⁹ This section was prepared by Jennifer Lake/DSP

and embargoes against specially designated terrorist groups, rogue nations, organizations and individuals; and interdicting the illicit proceeds from narcotics and other criminal activities in the form of unreported and smuggled currency. Outbound Interdiction and Security is also responsible for enforcing the International Traffic in Arms Regulations (ITAR) for the Department of State, the Export Administration Regulations (EAR) for the Department of Commerce, and sanctions and embargoes for the Department of the Treasury's Office of Foreign Assets Control. As a part of the Currency Program, dedicated outbound currency teams work to interdict the illicit flow of money to terrorist, criminal, and narcotics trafficking organizations. Under the EXODUS program, CBP enforces the ITAR, EAR, and OFAC regulations.

Capabilities and Resources. CBP enforces more than 400 laws at the border. Those associated with criminal violations include violations of 18 U.S.C. 1956 and 1957 (money laundering); 18 U.S.C. 541 (entry of goods falsely classified); 18 U.S.C. 542 (entry of goods by means of false statements); and 18 U.S.C. 545 (smuggling goods into the U.S.).

Data regarding budget and resources devoted to terrorist financing specifically are not readily available. However, general data regarding CBP operations are available. CBP has more than 38,000 employees. Of these, nearly 17,800 are front line inspectors. CBP's budget for FY2004 is \$5.9 billion and \$6.2 billion has been requested for FY2005.

CBP has developed an Outbound Currency Interdiction Training (OCIT) program to support its currency interdiction mission. This training includes instruction and practical exercises to provide specialized knowledge in currency interdiction, and has an anti-terrorism component. In FY2003, OCIT trained 56 inspectors. In FY2003, CBP also conducted land-border outbound training, which also included currency interdiction training. In addition, CBP has the largest Canine Enforcement Program in the country with more than 1,200 teams assigned to 79 ports of entry, and 69 Border Patrol Stations. Some of these canines have been trained to detect currency, according to CBP.

Measures of Success and Accomplishments. In FY2003 CBP Interdiction and Security (Outbound) operations made 1,337 seizures of unreported and bulk smuggling of currency valued at \$51.7 million, representing a 3.8% decrease in the number of seizures, but an increase of 14.4% in the value of seizure over FY2002. This same unit also made a total of 993 seizures valued at \$110.2 million for violations of: the ITAR for the Department of State, the EAR for the Department of Commerce, and sanctions and embargoes for the Department of the Treasury's OFAC. These seizures represent a 12.5% increase in the number of seizures, and a 62.9% increase in the value of seizures compared to FY2002. CBP's Canine Enforcement Program was responsible for seizures of U.S. currency worth \$27.9 million in FY2003. According to recently reported statistics, CBP makes 5 currency seizures valued at more than \$226 thousand on an average day.

In terms of relevant performance measures, CBP sets targets based on the value of outbound currency seizures, and on the effective percentage of outbound enforcement targeting. In FY2003 CBP's seizure target was \$49 million, and the actual seizure amount was \$51.7 million. Also, in FY2003, CBP's Outbound

targeting enforcement effectiveness (measured by percent effective) target was 9%, while actual targeting effectiveness was 5.74%.¹²⁰

Relationships and Coordination with other Agencies. CBP maintains relationships and coordinates with many agencies in the performance of its border security missions. These include other DHS agencies including ICE, Coast Guard, and the Transportation Security Administration (TSA); as well as those agencies whose statutes and regulations CBP enforces at the border, for example the Departments of the Treasury and State. CBP's National Targeting Center houses staff from a number of agencies including ICE, Coast Guard; the U.S. Department of Agriculture; TSA; and the FBI. In addition, CBP's Office of Intelligence (OINT) supports CBP front line operations in detecting and interdicting terrorists and instruments of terror. OINT maintains a variety of important relationships with other intelligence agencies including ICE; Information Analysis and Infrastructure Protection (IAIP); the FBI; the Central Intelligence Agency; the joint venture Terrorist Threat Integration Center (TTIC); and the FBI-led Terrorist Screening Center (TSC).

Bureau of Immigration and Customs Enforcement (ICE)¹²¹

The Bureau of Immigration and Customs Enforcement is the main investigative branch of the Department of Homeland Security. Established in March, 2003 during the reorganization that followed the creation of DHS, ICE is composed of the investigative components of the legacy U.S. Customs Service (Customs), the legacy U.S. Immigration and Naturalization Service (INS); the Federal Protective Service, the Federal Air Marshals, and the Air and Marine Interdiction Operations of legacy Customs. ICE's work on financial investigations is conducted by the Financial Investigations Division (FID). FID's mission is to investigate financial crimes, and to work closely with the financial community to identify and address vulnerabilities in the country's financial infrastructure. FID is organized into two primary sections: the Financial Investigative Program (FIP); and Cornerstone.

Role in Terrorist Financing. In the aftermath of the September 11, 2001 terrorist attacks, legacy Customs launched a multi-agency task force called "Operation Green Quest." Green Quest was the focus of Customs efforts to counter terrorist financing operations. With the creation of DHS, and the subsequent creation of ICE and CBP, legacy Customs investigative resources were combined with investigative assets of the legacy INS. While Operation Green Quest continued past the date of the creation of DHS, as investigations continued it was discovered that there was (the potential if not actual) overlap between cases being pursued by ICE under Green Quest, and cases being pursued by the Federal Bureau of Investigation under its Terrorist Financing Operation Section (TFOS). In an attempt to avoid overlap, and to delineate the lines of investigative priority and responsibilities, the Secretary of Homeland Security and the Attorney General signed a Memorandum of

¹²⁰ Outbound enforcement targeting effectiveness is the total number of positive examinations divided by the total number of targeted examinations conducted. For more information see, DHS, *Performance and Accountability Report FY2003*, p. 157.

¹²¹ This section was prepared by Jennifer Lake/DSP

Agreement in May, 2003. This MOA designated the FBI as the lead investigative agency with respect to terrorist financing investigations.

Concerned about the potential loss of expertise held by ICE agents, the MOA also contained provisions to ensure that ICE, while not the lead agency on terrorist financing investigations, nonetheless was able to play a significant role. The MOA provided that ICE and the FBI detail appropriate personnel to the other agency. Recent GAO reports and testimony indicate for example, that an ICE manager serves as the Deputy Section Chief of TFOS, and that an FBI manager is detailed to ICE's FID.¹²² The MOA further specified that the two agencies develop collaborative procedures to determine whether ICE investigations or leads are related to terrorism or terrorist financing. To this end, ICE created a vetting unit, staffed by both ICE and FBI personnel, to conduct reviews and determine any links to terrorism in ICE investigations or financial leads. If a link is found, the case or lead is referred to the FBI's TFOS, where the FBI and FBI-led JTTFs assume a leadership role in the investigation with significant support from DHS investigators.

As mentioned above, ICE has combined the authorities and jurisdictions of the legacy Customs Service, and legacy INS. ICE created the Financial Investigations Division (FID), and reorganized it into two primary programs, FIP and Cornerstone, to harness its full investigative potential. FIP's mission is to oversee efforts in accordance with and in support of the National Money Laundering Strategy. These efforts include investigations targeting drug and 'non-drug' money laundering (human smuggling, telemarketing fraud, child pornography, and counterfeit goods trafficking); and other financial crimes. FIP also runs the Money Laundering Coordination Center (MLCC), which serves as the central clearinghouse for domestic and international money laundering operations within ICE. Cornerstone's mission is to coordinate and integrate ICE's financial investigations to systematically target the "methods by which terrorist and criminal organizations earn, move, and store their illicit funding." Cornerstone applies a three-pronged approach involving: mapping and coordinating the investigation and analysis of financial, commercial, and trade crimes; close collaboration with the private sector to identify and eliminate vulnerabilities; and gathering, assessing and distributing intelligence regarding these vulnerabilities to relevant stakeholders. The ICE Office of Intelligence supports all of ICE's investigations, and supports the financial investigations through its Illicit Finance Unit, in the Intelligence Operations Branch at ICE headquarters.

ICE has investigatory jurisdiction over violations of 18 U.S.C. 1956 and 1957 that derive from the jurisdiction formerly vested in the legacy Customs Service, which was a part of the Treasury Department. ICE has jurisdiction over criminal violations including international transportation of financial instruments including those involving unlicensed money transmitters, smuggling bulk currency, and transactions to evade currency reporting requirements; laundering proceeds derived from drug smuggling, trade fraud, export of weapons systems and technology, alien smuggling, human trafficking, and immigration document fraud.

¹²² See, General Accounting Office, *Combating Terrorism: Federal Agencies Face Continuing Challenges in Addressing Terrorist Financing and Money Laundering*, GAO-04-501T, (Washington: Mar. 4, 2004);

In addition, ICE has 37 attache offices in foreign countries, all of which are involved in financial investigations. ICE also leads a Foreign Political Corruption Unit (which conducts joint investigations with representatives of the victimized foreign government), focused on combating the laundering of proceeds deriving from foreign political corruption, and bribery or embezzlement. ICE also provides training and assistance to foreign governments through the International Law Enforcement Academy (ILEA) and programs sponsored by the Department of State's Bureau of International Narcotics Law Enforcement (INL). ICE has provided money laundering-related training through ILEA schools located in Bangkok, Thailand; Gaborone, Botswana; and Romania. ICE provides INL sponsored training on financial investigations to countries identified by State's Terrorist Finance Working Group, including United Arab Emirates, Qatar, and Brazil. The Organization of American State (OAS), Inter-American Drug Abuse Control Commission (CIDAD) Program, specifically requested ICE to conduct the money laundering/financial investigations module at the Andean Community Counterdrug Intelligence School, that will provide training for law enforcement officers from five South American countries.

Capabilities and Resources. According to the most recent FY2005 DHS Congressional Budget Justifications, ICE's Financial Investigations Division had 2,150 FTE in FY2003 and was appropriated more than \$287 million for its operations. For FY2004 ICE estimates it will have 2,311 FTE, and has requested 2,442 FTE for FY2005. FID received \$283 million in FY2004, and has requested \$314 million for FY2005.¹²³ According to a recent GAO report, as of February 2004, a total of 277 ICE personnel were assigned full-time to JTTFs. This total breaks out to 161 former INS agents, 59 Federal Air Marshals, 32 former Customs Service agents, and 25 Federal Protective Service agents.¹²⁴

Measures of Success and Accomplishments. While data are not readily available specifically concerning ICE investigations related to terrorist financing, data are available regarding financial investigations in general. According to recent testimony, since ICE's inception on March 1, 2003, ICE financing investigations have resulted in "more than 1,300 arrests, 720 indictments, 560 convictions, and seized approximately \$150 million."¹²⁵ More current data posted by ICE on its web page indicate that during the period between March 1, 2003 and April 30, 2004, ICE seized more than \$324 million in currency and made more than 1,705 arrests under Operation Cornerstone.

Relationships and Coordination with other Relevant Agencies. The breadth of ICE's financial investigative responsibilities require ICE to maintain strong relationships with other U.S. agencies involved in financial investigations

¹²³ Department of Homeland Security. *FY2005 Congressional Budget Justification*, "Immigration and Customs Enforcement" ICE-37.

¹²⁴ GAO-04-710T. This report also noted that this total does not include agents assigned to JTTFs on a part-time basis, nor does it include agents who will be assigned to JTTFs in connection with vetted cases moving to the JTTFs from ICE.

¹²⁵ Testimony of ICE Director of Operations Michael T. Dougherty, before the Senate Caucus on International Narcotics Control, Mar. 4, 2004.

including the FBI; Internal Revenue Service, Secret Service, the Drug Enforcement Administration, State Department, and others. As noted above, ICE also maintains significant relationships with foreign governments and international organizations.

U.S. Secret Service¹²⁶

The United States Secret Service — now a part of the Department of Homeland Security (DHS), where it is to be “maintained as a distinct entity”¹²⁷ — had been housed, since its inception as a small anti-counterfeiting force in 1865, in the Department of the Treasury.¹²⁸ As a result of its missions and responsibilities, the Service’s roles in combating terrorism and financial crimes are manifold, extending to anti-terrorist financing.¹²⁹ These can be direct, through participation in relevant interagency task forces and its own investigations of financial crimes, or indirect, through its activities and operations in seemingly unrelated areas. (Protective and security duties, for instance, might uncover terrorist financing arrangements behind potential assaults; or examination of identity theft might disclose the use of credit cards by terrorist cells.)

¹²⁶ This section was prepared by Fred Kaiser/G&F

¹²⁷ This autonomy was granted in the legislation establishing DHS (P.L. 107-296, Sec. 821 (2002)).

¹²⁸ The variety and prominence of Secret Service activities in the broad field of domestic security date to its birth during the Civil War, when the Secret Service was created as a small special investigative force to combat massive counterfeiting operations. Later, its assumption of presidential protection (since expanded to numerous other security assignments) occurred in the mid-1890s, because of credible threats against President Grover Cleveland and his family. For background and citations on this history, see Frederick M. Kaiser, “Origins of Secret Service Protection of the President,” *Presidential Studies Quarterly*, vol. 18, winter 1988.

¹²⁹ Descriptions and overviews are in: U.S. Secret Service, *Strategic Plan, 2003-2008, Budget Request, FY2005* (2004), and *Mission Statement* (2003), available at [<http://www.secretservice.gov>]. Recent congressional hearings have also provided information, available at each panel’s website: U.S. Congress, House Committee on Financial Services, *Terrorist Financing*, hearings, 108th Cong., 2nd sess., May 4, 2004; Senate Committee on Banking, Housing, and Urban Affairs, *Counterterrorism Initiatives and Concerns in the Terror Finance Program*, hearings, 108th Cong., 2nd sess., May 29 and June 3, 2004; and Senate Committee on Governmental Affairs, *An Assessment of Current Efforts to Combat Terrorism Financing*, hearings, 108th Cong., 2nd sess., June 15, 2004. Other sources are: U.S. Department of Homeland Security, *Interim Strategic Plan, 2003-2008* (2003), available at [<http://www.dhs.gov/dhspublic>]; U.S. Department of the Treasury, Executive Office for Terrorist Financing and Financial Crime, *Mission Statement, 2004*, available at [<http://www.treasury.gov/offices/eotffc/>]; and recent reports and testimony from the U.S. General Accounting Office, *Anti-Money Laundering: Issues Concerning Depository Institution Regulatory Oversight*, GAO04-833 (2004); *Investigating Money Laundering and Terrorism Financing*, GAO-04-710T (2004); *Combating Terrorism: Federal Agencies Face Continuing Challenges in Addressing Terrorist Financing and Money Laundering*, GAO-04-501T (2004); and *Terrorist Financing: U.S. Agencies Should Systematically Assess Terrorists’ Use of Alternative Financing Mechanisms*, GAO-04-163 (2003).

Even though the Secret Service no longer resides in the Treasury Department, the agency is still connected to its previous departmental home and certain responsibilities. This occurs because the Secret Service's authority, mandates, functions, and jurisdiction were continued when it was moved intact to its new residence.

Secret Service Involvement. Secret Service involvement in combating terrorist financing is an outgrowth of its two principal missions — protection and, especially, criminal investigations — and it is connected with several Service responsibilities, functions, and activities.¹³⁰ The agency's mission statement on criminal investigations summarizes these:

The Secret Service also investigates violations of laws relating to counterfeiting of obligations and securities of the United States; financial crimes that include, but are not limited to, access device fraud, financial institution fraud, identify theft, computer fraud; and computer-based attacks on our nation's financial, banking, and telecommunications infrastructure.¹³¹

Flowing into this main stream are several tributaries from within the Service, including a Counterfeit Division. But the most relevant for combating terrorist financing is the Financial Crimes Division, which, among other matters, covers financial institution fraud, money laundering, forgery, and access device fraud.¹³² The division has also been involved in numerous task forces consisting of other federal agencies as well as subnational government entities:

Several of these task forces specifically target international organized crime groups and the proceeds of their criminal enterprises ... These groups are not only involved in financial crimes, but investigations indicate that the proceeds obtained from financial fraud are being diverted toward other criminal enterprise.¹³³

The task forces can also extend to international components or connections. Task forces involving the Financial Crimes Division include CABINET (Combined Agency Interdiction Network), INTERPOL (International Criminal Police Organization), the Financial Crimes Task Force, the Asian Organized Crime Task Force, and the West African Task Force.¹³⁴

Caveats and Their Meaning. Several important caveats to any examination of Secret Service activities as well as efforts to combat terrorist financing are in order. One is that authoritative, detailed, and comprehensive information about the Secret Service and its operations in the public record is lacking. This results, of

¹³⁰ Secret Service, *Strategic Plan, 2002-2005*.

¹³¹ Secret Service, *Mission Statement*.

¹³² Ibid., Financial Crimes Division statement, available at [http://www.secretservice.gov/financial_crimes.shtml].

¹³³ Ibid.

¹³⁴ Ibid.

course, from the high degree of secrecy and sensitivity surrounding them. The public submissions from the Service itself or from its adoptive parent, the Department of Homeland Security, are usually general in scope, limited in detail, and short on specifics. (The Secret Service, however, does provide more information directly to Members and committees of Congress in executive session or otherwise in confidence, through reports, hearings, meetings, and briefings.)

A second qualification is that the federal involvement in combating terrorist financing has been and probably still is evolving, involving a number of different entities and connections among them. (As noted above, for example, Treasury's Office of Terrorism and Financial Intelligence emerged only recently.) Changes over time have occurred, affecting organizational structure, agency duties and operations, interagency coordinative arrangements, networks consisting of federal along with subnational and private organizations, and informal relationships. Similar changes might occur again with the same impact.

A third caveat is that actual practice might not conform to expected practice and that formal institutional arrangements might differ from informal undertakings. Consequently, some of the accounts in the public record might not adequately describe on-going interrelationships, activities, and operations; their scope and range; their effectiveness and results; or their comparative importance.

Collectively, these qualifications have meaning for the Secret Service's role and responsibilities in combating terrorist financing. These are not specified in detail in the public record, a gap that leads to uncertainty and even some confusion about them. In addition, the roles may have been transformed since the Service's move into Homeland Security and out of Treasury, where the lead agency (and several related bureaus) are headquartered. The roles or practices may continue to change under certain circumstances: for instance, if Treasury's bureaus and offices increase their responsibility and operations; if the reverse occurs, whereby TFI calls upon the Secret Service for additional involvement; or if the Secret Service's own priorities are altered, to elevate, as an illustration, the protective mission while reducing criminal investigations.

The Federal Bureau of Investigation (FBI)¹³⁵

The Federal Bureau of Investigation is the lead agency in the Department of Justice which has the dual mission of protecting U.S. national security and combating criminal activities. As a statutory member of the U.S. Intelligence Community, it is charged with maintaining domestic security by investigating foreign intelligence agents/officers and terrorists who pose a threat to U.S. national security. The FBI's criminal investigative priorities include organized crime and drug trafficking, public corruption, white collar crime, and civil rights violations. In addition, the FBI investigates significant federal crimes including, but not limited to, kidnaping, extortion, bank robberies, child exploitation and pornography, and international child abduction. The FBI also provides training and operational assistance to state, local,

¹³⁵ This section was prepared by Todd Masse/DSP

and international law enforcement agencies. Its two top priorities are counterterrorism and counterintelligence, respectively.

Due to its dual law enforcement and national security missions, the FBI has the responsibility and jurisdiction to counter both criminal money laundering and terrorist-related financing. According to the FBI, “...Within the FBI, the investigation of illicit money flows crosses all investigative program lines.”¹³⁶ As mentioned above, while there are some similarities between money laundering and terrorist financing at the tactical or operational level — that is the methodologies by which fungible resources are stored and transferred — there are also differences between these two areas, not the least of which is the end use of the financial resources. What follows is a description of the FBI’s organization, capabilities, and relationships to and coordination with other agencies with respect to money laundering and terrorist financing.

The FBI Mission to Counter Money Laundering. The FBI has primary jurisdiction over the bulk of specified criminal offenses associated with money laundering in statute.¹³⁷ In general, investigations involving money laundering fall under the purview of its Criminal Investigative Division. The Division’s Financial Crimes Section (FCS) and Money Laundering Unit (MLU) specialize in tracing illicit proceeds — “following the money” — that criminals seek to hide in multiple transactions in legitimate commerce and finance. Indeed, the investigative techniques developed by the FCS were used to trace the movements and commercial transactions of the 9/11 hijackers.¹³⁸

The MLU works with federal, state, and local agencies — often through federal task forces — to identify and document emerging money laundering trends and methods. The MLU analyzes suspicious activity reports (SARs) and other criminal intelligence to generate new investigations and contribute to ongoing investigations.¹³⁹

In 2001, the FBI accounted for over one-quarter of criminal cases (423) referred to the U.S. Attorneys for prosecution in which money laundering was the primary charge,¹⁴⁰ but such cases only accounted for a small percentage (1.4%) of the 30,708 cases referred by the FBI for prosecution in that year.¹⁴¹ The FBI was also the lead

¹³⁶ See Testimony of Gary M. Bald, Acting Assistant Director for Counterterrorism Division, FBI, Before the Senate Caucus on International Narcotics Control, March 4, 2004.

¹³⁷ 18. U.S.C. § 1956(c)(7).

¹³⁸ U.S. Department of Justice, Executive Office for United States Attorneys, “Terrorism Financing,” in *United States Attorneys’ Bulletin*, July 2003, Volume 51, Number 4, p. 8.

¹³⁹ Federal Bureau of Investigation, “About the Money Laundering Unite” web page, go to [http://www.fbi.gov/hq/cid/fc/ml/m._about.htm].

¹⁴⁰ Such cases involved charges under 18 U.S.C. §§ 1956, 1957, and 1960; and 31 U.S.C. §§ 5313, 5316, and 5324.

¹⁴¹ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Money Laundering Offenders, 1994-2201*, by Mark Motivans, Ph.D., July 2003, p. 5.

agency for Title 18 U.S.C. money laundering referrals (376),¹⁴² but such cases do not include those involving providing material support to foreign terrorists and international financial transaction offenses.¹⁴³

The FBI Mission to Counter Terrorist Financing. The Department of Justice/FBI jurisdiction and authority to investigate cases of terrorist financing as crime distinct from money laundering date to 1994 with the enactment of the first “material support” legislation.¹⁴⁴ The material support laws were subsequently enhanced with the enactment of the USA PATRIOT Act. A variety of other legal tools are also used in the investigation and prosecution of terrorist financing activity.¹⁴⁵

Pursuant to its national security mandate, the FBI has long had responsibility for tracking terrorist financing either in response to a terrorist attack, or in a manner that would prevent such an attack. However, according to the FBI, “...Prior to the events of 9/11/2001, [the FBI] had no mechanism to provide a comprehensive, centralized, focused and pro-active approach to terrorist financial matters.”¹⁴⁶ It was not until April 2002, that the various elements of the FBI tracking terrorist financing were integrated under the Terrorist Financing Operations Section (TFOS) of the FBI’s Counterterrorism Division. According to the FBI, the mission of TFOS is to:

conduct full financial analysis of terrorist suspects and their financial support structures in the United States and abroad; coordinating joint participation, liaison and outreach efforts to appropriately utilize financial information resources of private, government and foreign entities; utilizing FBI and Legal Attache expertise to fully exploit financial information from foreign law enforcement, including the overseas deployment of TFOS personnel; working jointly with the intelligence community to fully exploit intelligence to further terrorist investigations; working jointly with prosecutors, law enforcement, and regulatory communities; and developing predictive models and conducting data

¹⁴² Such cases involved charges under 18 U.S.C. §§ 1956, 1957, and 1960.

¹⁴³ 18 U.S.C. §§ 2339A and 2339B, 50 U.S.C. 1701 and 1702.

¹⁴⁴ See 18 U.S.C. Section 2339A, which defines “material support or resources” for terrorist activities as “currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”

¹⁴⁵ Some of these laws include 18 U.S.C., Section 956 concerning conspiracies within the United States to kill/maim persons and destroy specific property abroad; 18 U.S.C., Section 2339B concerning the provision of material support to designated foreign terrorist organizations; and 50 U.S.C., Sections 1701 and 1702 concerning transactions undertaken in violation of United States economic sanctions (generally known as violations of the International Emergency Economic Powers Act). See U.S. Department of Justice, Executive Office for United States Attorneys “Terrorist Financing,” in *United States Attorneys’ Bulletin*, July 2003, Volume 51, Number 4, p. 31.

¹⁴⁶ See Testimony of John S. Pistole, Executive Assistant Director for Counterterrorism and Counterintelligence, Before the Senate Committee Banking, Housing and Urban Affairs, September 25, 2003.

analysis to facilitate the identification of previously unknown terrorist suspects.¹⁴⁷

TFOS Resources and Capabilities. Due to the sensitive, if not classified, role of some of the activities of the TFOS, there is little publicly available information about the resources dedicated to this function at the FBI. In terms of the types of professionals working within TFOS, FBI testimony indicates that there is a mixture of financial intelligence analysts and law enforcement officers. According to the FBI, in order to analyze existing financial and other information for counterterrorism purposes, TFOS, working with the Counterterrorism Section of the Department of Justice's Criminal Division, works to identify potential electronic data sources controlled by domestic and foreign governments, as well as the private sector that may be valuable in its efforts. Once identified TFOS attempts to create the legally appropriate protocols to access and analyze this information in order to provide reactive and proactive operational, predictive and educational support to investigators and prosecutors. According to the FBI, some of the projects and initiatives associated with information technology exploitation include:

- **The Proactive Exploits Group (PEG).** This TFOS group serves as a proactive unit by working closely with document exploitation personnel to generate investigative leads for TFOS and other FBI investigative divisions. The PEG has conducted a survey of available data mining and link analysis software for use in TFOS activities.
- **The Suspicious Activity Report Project.** The SAR Project attempts to identify potential terrorists through the mining of existing databases for "...key words, patterns, individuals, entities, accounts and specific numeric indicators (i.e. Social Security...passport, telephone etc.).¹⁴⁸ This research and analysis is conducted independent of whether the reported SAR has a nexus to terrorism.
- **The Terrorist Risk Assessment Model.** Under this project, the FBI is attempting to identify potential terrorists and terrorist financing activities through the use of "predictive pattern recognition algorithms," or profiles of historical financial transactions that are associated with terrorist activities.¹⁴⁹

¹⁴⁷ See Testimony of Michael F. Morehart, Section Chief, Terrorist Financing Operations Section, Counterterrorism Division, FBI, Before the Congressional Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy, and Human Resources, May 11, 2004.

¹⁴⁸ See Testimony of Carl Whitehead, Special Agent in Charge, Tampa Division, FBI, Before the House Committee of Government Reform, Subcommittee on Government Efficiency and Financial Management and Subcommittee on Technology and Information Policy and the Census, December 15, 2003.

¹⁴⁹ Ibid.

Information Access. According to the FBI, the TFOS has developed substantial contacts domestically and internationally that have enhanced its access to near real-time information to advance the TFOS mission. Domestically, through outreach to the private sector, and with appropriate legal process, the FBI has access to, among other information: "...Banking, Credit/Debt Card Sector, Money Services Businesses, Securities/Brokerages Sector, Insurance, Travel, Internet Service Providers, and the Telecommunications Industry."¹⁵⁰ Internationally, TFOS investigators have supported numerous investigations which have led to the exchange of investigative personnel between the FBI and numerous foreign countries or agencies. For example, according to the FBI, the United Kingdom, Switzerland, Canada, Germany, and Europol have all detailed investigators to the TFOS on temporary duty.¹⁵¹ Moreover, the State Department has requested that the FBI-TFOS lead an interagency team to provide a TFOS-developed training curriculum to other countries requesting assistance in further developing their existing investigative programs, legislative and legal regimes, and financial oversight controls to counter terrorist financing.

FBI Measures of Success and Related Accomplishments. A review of publicly available FBI documents and official testimony suggests that the FBI measures its success in countering terrorist financing through numerous measures, to include the deterrence, disruption, or prevention of terrorist attacks; the identification of previously unknown ("sleeper") terrorist suspects, terrorist organizations, and terrorist supporters; enhancing the understanding of a terrorist attack after it has occurred by analyzing existing financial information gathered through the case and liaison; the development and generation of additional terrorism leads and investigations; the number of arrests, indictments and convictions for activities in violation of the aforementioned and related statutes; the closure of domestic and international non-governmental organizations and charities with linkages to designated terrorist organizations; and the seizure and/or blockage of terrorist assets. Given these self-determined criteria for assessing performance, in public remarks, the FBI has articulated its various successes in working with foreign and domestic law enforcement and intelligence agencies to achieve its goals. Some of the often cited FBI successes in terrorist financing include (1) the disruption and dismantlement of a Hezbollah procurement and fund-raising network relying on interstate cigarette smuggling; (2) FBI support to a U.S. Treasury, Office of Foreign Asset Control investigation that led to the blocking of assets of the Holy Land Foundation for Relief and Development (HLF), which, according to the FBI, had been linked to the funding of Hamas terrorist activities, and (3) the shutting down of the U.S.-based Office of the Benevolence International Foundation (BIF) after it was determined through FBI - OFAC cooperation that the charity was funneling money to Al Qaeda.¹⁵²

Notwithstanding these FBI successes, some would argue that measuring the progress and performance of any one agency with respect to stanching terrorist

¹⁵⁰ See Testimony of John Pistole, September 25, 2003.

¹⁵¹ Ibid.

¹⁵² See Testimony of Gary M. Bald, March 4, 2004.

financing may be analogous to measuring U.S. performance in the broader war against terrorism. Quantitatively speaking, and with substantial assistance from the FBI and its domestic and international partners, approximately \$200 million has been blocked and seized,¹⁵³ although here are no known and reliable measures for the aggregate size of the international funding pools which may support terrorism. Qualitatively speaking, and with support from the FBI and other federal agencies, while bank transactions are now being more closely monitored domestically than any time prior to 9/11, such activities may only have driven flows of financial resources into non-bank-related or alternate financing channels, such as *hawalas*.¹⁵⁴

According to the FBI, in order to address some of the concerns raised by the Government Accountability Office with respect to alternative financing mechanisms, it has developed intelligence requirements related to known indicators of terrorist financing activity.¹⁵⁵ Theoretically, such requirements should cause the FBI's field collectors (largely its special agents located at the 56 FBI field offices¹⁵⁶) to proactively collect intelligence on alternative mechanisms of financing terrorism. Secondly, according to the FBI, the TFOS Program Management and Coordination Unit (PCMU) has been tasked with "tracking various funding mechanisms used by different subjects on ongoing investigations - to include alternative financing mechanisms."¹⁵⁷

Relationships to and Coordination with Other Agencies. The FBI participates in, and leads some, domestic and international groups the primary

¹⁵³ See Testimony of Juan C. Zarate, Deputy Assistant Secretary, Executive Office for Terrorist Financing and Terrorist Crimes, U.S. Department of the Treasury, Before the House International Relations Committee, Subcommittee on Middle East and Central Asia, March 24, 2004.

¹⁵⁴ See General Accounting Office, *Terrorist Financing: U.S. Agencies Should Systematically Assess Terrorists' Use of Alternate Financing Mechanisms*, November 2003, (GAO-04-163). See also *Overview of the Enemy: Staff Statement No. 15*, of the National Commission on Terrorist Attacks Upon the United States (Keane Commission), pp. 9-10. This statement suggests that although "...al Qaeda frequently moved its money by *hawala*, an informal and ancient trust-based system for moving funds...no persuasive evidence exists that al Qaeda relied on the drug trade as important source or revenue, or funded itself through trafficking in diamonds from African states engaged in civil wars." For more information on *hawalas*, see *The Hawala Alternative Remittance System and Its Role in Money Laundering*, a report produced by the U.S. Treasury, Financial Crimes Enforcement Network, in cooperation with Europol. This report may be found at [<http://www.ustreas.gov/offices/eotffc/key-issues/hawala/FINCEN-Hawala-rpt.pdf>].

¹⁵⁵ For an assessment of the FBI's intelligence reform since 9/11/2001, see CRS Report RL32336, *FBI Intelligence Reform Since September 11, 2001: Issues and Options for Congress*, by Alfred Cumming and Todd Masse, April 6, 2004.

¹⁵⁶ For a listing of the locations of the 56 field offices, and overseas Legal Attache Offices, respectively, see [<http://www.fbi.gov/contact/fo/fo.htm>] and [<http://www.fbi.gov/contact/legat/legat.htm>] or CRS Report RL32095, *The Federal Bureau of Investigation: Past, Present and Future*, by William Krouse and Todd Masse, October 2, 2003, appendices I (field offices) and III (Legal Attache Offices).

¹⁵⁷ See Testimony of John Pistole, March 4, 2004.

function of which is to coordinate the activities related to terrorist financing. Domestically, it is a participant in the National Security Council's Policy Coordination Committee on Terrorist Financing (established in late 2001) which meets at least once a month to coordinate the United States Government's activities to counter terrorism financing. It is also a participant in the State Department-chaired Terrorist Financing Working Group (TFWG) which identifies, prioritizes and assists those countries whose financial systems may be vulnerable to manipulation for terrorist purposes; other agencies participating in this group include the Departments of the Treasury and Homeland Security. The interagency FBI-led Joint Terrorism Task Forces, of which there are currently 84, play the lead role in investigating terrorist financing activities. In addition to representatives from federal law enforcement agencies, the JTTFs also include participation of many state and local law enforcement officers.

As mentioned earlier, a Memorandum of Agreement was signed in May 2003 by the Attorney General and Secretary of Homeland Security to de-conflict and clarify the terrorist financing activities of the FBI and DHS, particularly the Bureau of Immigration and Customs Enforcement. Under the MOA, generally, the FBI was designated the lead agency for the investigation of terrorist financing, and DHS was enabled to focus its law enforcement activities on protecting the integrity of the financial system. A process was established whereby existing DHS terrorist financing investigations (largely part of legacy U.S. Customs' "Operation Green Quest") would be reviewed jointly to determine if there was a nexus to terrorism. If a joint determination was made by the FBI and DHS that there was a nexus to terrorism, the case would be transferred to the FBI-led JTTF. Because DHS - ICE law enforcement officers are on the JTTF, they would continue to play an important role in the investigation. If a joint determination was made that there was no nexus to terrorism, the case would remain with DHS- ICE, and likely become a part of "Operation Cornerstone," ICE's effort to identify and work to resolve vulnerabilities in the U.S. financial system that may be exploited by terrorists.

Internationally, in addition to its 45 Legal Attache Offices which conduct law enforcement and intelligence liaison, the FBI formed the International Terrorism Financing Working Group (ITFWG). Composed of law enforcement and intelligence agency representatives from the United Kingdom, Canada, Australia, and New Zealand, the ITFWG works to coordinate information and intelligence sharing with respect to national efforts to counter terrorist financing.¹⁵⁸ Moreover, the FBI is a participant in the Joint Terrorism Financing Task Force, based in Riyadh, Saudi Arabia to gather information about financing activities having a potential nexus to the Kingdom of Saudi Arabia and other countries or non-state terrorist groups operating in the Near East region. The information gathered is provided to the FBI' TFOS, and subsequently to the FBI-led JTTFs in the United States for investigation, as appropriate.¹⁵⁹

¹⁵⁸ See Testimony of Gary M. Bald, March 4, 2004.

¹⁵⁹ See Testimony of Juan C. Zarate, March 24, 2004.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)¹⁶⁰

ATF's mission and roles related to terrorist financing. On January 24, 2003, the Bureau of Alcohol, Tobacco and Firearms' law enforcement functions were transferred from the Treasury Department to the Department of Justice, and became the Bureau of Alcohol, Tobacco, Firearms and Explosives. ATF enforces the federal laws and regulations relating to alcohol, tobacco, firearms, explosives and arson by working directly and in cooperation with others to: 1) Suppress and prevent crime and violence through enforcement, regulation, and community outreach; 2) Ensure fair and proper revenue collection and provide fair and effective industry regulation; 3) Support and assist federal, state, local, and international law enforcement; and 4) Provide innovative training programs in support of criminal and regulatory enforcement functions.

In supporting the DOJ's primary strategic goal of preventing terrorism and promoting national security, the ATF participates in joint terrorism task force initiatives, as well as other interagency counterterrorism mission partnerships. Operations and intelligence data in firearms trafficking and explosives accountability have shown that terrorist organizations may be shifting to tobacco and alcohol commodities to fund their criminal activities. As it relates to terrorist financing, the ATF seeks to reduce and divest criminal and terrorist organizations of monies derived from illicit alcohol diversion and contraband cigarette trafficking activity.

Specifically, the mission of the ATF's Alcohol and Tobacco Diversion Program is to: 1) Disrupt and eliminate criminal and terrorist organizations by identifying, investigating and arresting offenders who traffic in contraband cigarettes and illegal liquor; 2) Conduct financial investigations in conjunction with alcohol and tobacco diversion investigations in order to seize and deny further access to assets and funds utilized by criminal enterprises and terrorist organizations; 3) Prevent criminal encroachment on the legitimate alcohol and tobacco industries by organizations trafficking in counterfeit/contraband cigarettes and illegal liquor and; 4) Assist local, state, and other federal law enforcement and tax agencies in order to thoroughly investigate the interstate trafficking of contraband cigarettes and liquor.

Capabilities and resources. Teams of ATF auditors, special agents and inspectors are all involved with performing complex investigations of multi-state criminal violations of federal law. According to the *ATF 2003 Performance and Accountability Report*, if a broad definition of counterterrorism activities is used to include providing homeland security, in FY2003 ATF spent \$359.3 million, or 61 percent, of its net costs on the counterterrorism/homeland security effort.

Measures of success and accomplishments. In 2003, ATF conducted 295 investigations involving the trafficking of illicit or counterfeit tobacco

¹⁶⁰ This section was prepared by Cindy Hill/DSP

products.¹⁶¹ In four of these investigations, the ATF was able to confirm ties to terrorist organizations. For example, ATF investigated an organization in North Carolina that was trafficking cigarettes to Michigan and utilizing some of the profits to fund the Hezbollah in the Middle East. ATF efforts contributed to the indictment of 18 defendants associated with this operation.

ATF coordination with other federal agencies. In preventing unlawful trafficking in firearms and explosives and the diversion of alcohol and tobacco as financial means in support of terrorist activities, ATF continues to work in conjunction with all responsible law enforcement agencies to support terrorism-related investigations. ATF is represented at the National Drug Intelligence Center, El Paso Intelligence Center (EPIC), Federal Crime Enforcement Network (FINCEN), INTERPOL, the FBI Counterterrorism Center, Central Intelligence Agency, Department of Homeland Security, Defense Intelligence Agency, and the National Joint Terrorism Task Force. ATF is also represented at the executive level in the FBI Strategic Intelligence Operations Center and is involved in the Law Enforcement Information Sharing (LEIS) group. ATF maintains a Memorandum of Understanding with six Regional Information Sharing Systems (RISS) agencies, which represents thousands of state and local law enforcement agencies.

Drug Enforcement Administration (DEA)¹⁶²

DEA's responsibilities with regard to terrorist financing. DEA's mission is to enforce the treaties, laws, and regulations that seek to eliminate the manufacture, distribution, sale, and use of illegal drugs. The size of the worldwide market in illicit drugs — estimates range from \$300-\$500 billion per year — provides ample opportunities for drug proceeds to be diverted to terrorist ends through money laundering activities and other financial schemes.¹⁶³

Statutorily, DEA has authority to investigate monetary transactions resulting from unlawful drug activities under the primary U.S. money laundering statutes (18 U.S.C. 1956 and 1957) and the applicable civil and criminal forfeiture statute (18 U.S.C. 981 and 982). Jurisdiction under these statutes was granted to the Attorney General (as well as the Secretary of the Treasury and the Postmaster General) and delegated to DEA (and the FBI). DEA's enforcement jurisdiction is contingent upon the funds involved being derived from the trafficking of illegal narcotics. DEA also exercises authority under 18 U.S.C. 1960, the illegal money remitter statute, and 31 U.S.C. 5332, dealing with bulk cash smuggling when the funds involved in the violations are derived from trafficking of illegal narcotics. Both of these criminal statutes also have applicable forfeiture statutory provisions.

¹⁶¹ Department of Justice Alcohol, Tobacco, Firearms and Explosives. *ATF Performance and Accountability Report — 2003*, p. 1.

¹⁶² This section was prepared by Mark Eddy/DSP

¹⁶³ For an analysis of the links between drug trafficking and terrorism, see CRS Report RL32334, *Illicit Drugs and the Terrorist Threat: Causal Links and Implications for Domestic Drug Control Policy*, by Mark A.R. Kleiman.

Operationally, DEA Administrator Karen Tandy has mandated that every DEA investigation will have a financial investigative component. Thus, any DEA investigation could potentially discover monetary links to terrorist entities. Within DEA's infrastructure, the following components are specifically designated with anti-money laundering responsibilities:

- The Office of Financial Operations at DEA headquarters has overall program responsibility for all DEA financial investigative efforts;
- The Financial Intelligence Unit at DEA headquarters provides analytical support to the Office of Financial Intelligence;
- The Financial Section at the Special Operations Division (SOD) is a multi-agency section that coordinates multi-district, complex money-laundering wiretap investigations; and
- Each of DEA's 21 Field Divisions as well as the Bangkok, Bogotá, and Mexico City Country Offices have Financial Investigative Teams.

DEA resources devoted to combating terrorist financing. There are 45 positions in DEA authorized to support counter-terrorism efforts. Since FY2002, DEA has received funding from the FBI to reimburse DEA for counter-terrorism related investigative and analytical support provided through the Special Operations Division-Special Coordination Unit (SOD-SCU). DEA received, via reimbursable agreement from the FBI, \$7.7 million in FY2002, \$11.4 million in FY2003, and \$6.3 million in FY2004.

Measures of Success and Accomplishments. DEA does not maintain specific statistics related to terrorist financing. DEA's investigations, however, are routinely directed at activities involving narcotics and precursor materials that have the potential to fund terrorist organizations. Examples are Operation Mountain Express and Operation Northern Star, investigations that uncovered possible links between the trafficking of pseudoephedrine (a methamphetamine precursor) in the United States and Middle Eastern groups with terrorist connections.¹⁶⁴

DEA Coordination with Other Federal Agencies. The SOD-SCU is responsible for coordinating all responses to terrorism-related requests for SOD assistance and is responsible for sharing tactical and/or investigative information with other appropriate federal agencies. For the purpose of information exchange at the headquarters level, SCU personnel have been assigned to the National Joint Terrorism Task Force and the Department of Homeland Security. Domestic field investigations that identify extremist/terrorist information are documented in a teletype and/or DEA-6 Report of Investigation (ROI) and are immediately passed to the local FBI office and, if applicable, to JTTFs in the field. This information, as appropriate, is also passed to state and local enforcement counterparts. Foreign

¹⁶⁴ Information on both investigations can be found on the DEA Website [<http://www.usdoj.gov/dea/>].

Country Office investigations that identify extremist/terrorist information are documented in a teletype and/or ROI and immediately passed to the respective U.S. government agencies that are part of the local country team (e.g., State Department, Regional Security Officer, Military Attaché, FBI Legal Attaché, etc.). Documentation on domestic and foreign office investigations that identify extremist/terrorist information is also provided to the SOD-SCU along with the names of all individuals to whom the information was passed and their contact information.

All “cooperating sources” utilized in DEA investigations are debriefed quarterly regarding their knowledge of any terrorist-related information, including money laundering. This information is documented on a DEA Form 6 Report of Investigation using the protocols outlined above.

The Department of State¹⁶⁵

The Office of the Coordinator for Counterterrorism (S/CT) within the Department of State implements some key activities to help identify and stop terrorist financing and acts as the lead in coordinating U.S. government agencies in these efforts. Within S/CT is the Counterterrorism Finance and Designation Unit. State’s Bureau for Economic and Business Affairs (EB) also works closely with the Coordinator for Counterterrorism to freeze assets of terrorists and terrorist organizations.

The “finance” part of the Unit coordinates the delivery of technical assistance and training to foreign governments to help them improve their ability to investigate, identify and interdict the flow of funds to terrorists.

The “designation” part of the Unit leads and coordinates with the Departments of the Treasury and Justice to designate foreign terrorist organizations, as well as individual terrorists.

The Department of State’s S/CT and Bureau for International Narcotics and Law Enforcement Affairs (INL) co-chair the Terrorist Finance Working Group (TFWG) which is made up of numerous agencies throughout the U.S. government.¹⁶⁶

Funding for counterterrorism activities within State is designated for the Office of the Ambassador-at-large for Counterterrorism (\$1.788 million for FY2003, estimated \$1.703 million for FY2004 and a request of \$1.720 million for FY2005). In addition, there is funding for worldwide security upgrades for the Office of the Ambassador-at-large for Counterterrorism in State (FY2003 — none, FY2004 —

¹⁶⁵ This section was prepared by Susan Epstein/FDT.

¹⁶⁶ The interagency working group includes other offices and bureaus in the Departments of State, the Treasury, Justice, and Homeland Security, as well as the National Security Council, Central Intelligence Agency, and the Federal Reserve Board.

\$2.968 million, and for 2005 request — \$2.968 million). The budget does not break down funding levels to specific activities such as the freezing of assets.

Regulating the International System¹⁶⁷

The U.S. government has taken various domestic actions in order to increase its ability to counter the threat of terrorist financing. In addition to these domestic efforts, the U.S. government has worked with other countries, on a multilateral and bilateral basis, to create international rules, standards, and best practices to prevent terrorist financing.

Given the significant overlap between international money laundering and terrorist financing, the international community has addressed these crimes with a similar set of measures and policies. In 1988, the United Nations (UN) General Assembly passed the Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), the first international agreement to criminalize money laundering. A more important component of the agreement, some argue, is that it includes a mutual assistance clause mandating that governments collaborate with each other in money laundering investigations.¹⁶⁸ In order to facilitate cooperation on anti-money laundering issues among various nations, the Group of Seven (G-7) created the Financial Action Task Force (FATF) in 1989 in order to help countries implement the Vienna Convention.

Several recent conventions on terrorist financing have been negotiated. Most prominent among these was the UN's International Convention for the Suppression of the Financing of Terrorism (ICSFT), which entered into force on April 10, 2002. As of March 2004, 132 countries had signed the convention and 112 were full parties to the agreement.¹⁶⁹ The convention requires each country to criminalize the funding of terrorist activities under its domestic law and to seize or freeze funds used or allocated for terrorist purposes. Countries must ensure that their domestic laws require financial institutions to implement measures that identify, impede, and prevent the flow of terrorist funds. Finally, countries are required to prosecute or extradite individuals suspected of involvement in the financing of terrorism and to cooperate with other countries in the investigation and/or prosecution of those suspected of engaging in these acts.

United Nations Security Council Resolution (UNSCR) 1373, was adopted on September 28, 2001. It established numerous measures to combat terrorism, in addition to calling on member countries to become parties to the International Convention for the Suppression of the Financing of Terrorism. It focused on areas

¹⁶⁷ This section was prepared by Martin A. Weiss/FDT.

¹⁶⁸ Ian Roberge, "The Internationalization of Public Policy and the Fight Against Terrorist Financing," Paper presented at the International Studies Association Conference, Montreal, Canada, 2004, pg.12.

¹⁶⁹ [http://www.unausa.org/newindex.asp?place=http://www.unausa.org/policy/newsactionalerts/advocacy/fin_terr.asp]

of financing, intelligence sharing, and limiting terrorists' ability to travel. The resolution also required states to criminalize Al Qaeda financial activities and to freeze the group's monetary assets; it mandated exchanges of intelligence, among other arrangements. UNSCR 1373 was passed under Chapter VII of the UN Charter, making compliance mandatory for all member-states and giving the Security Council enforcement powers.

UNSCR 1267, passed in October 1999, set up the "1267 Committee," to monitor the sanctions imposed on then Taliban-controlled Afghanistan for its support of Osama Bin Laden and Al Qaeda. These sanctions require U.N. member states, among other things, to freeze assets of persons and entities listed by the 1267 committee. The Council has revised and strengthened these sanctions since 1999. On January 30, 2004, the Council, in Resolution 1526 (2004), further strengthened and expanded the Committee's mandate by requiring that states freeze economic resources derived from properties owned or controlled by Al Qaeda and the Taliban and also that states cut the flow of funds derived from non-profit organizations and alternative/informal remittance systems to terrorist groups.

Financial Action Task Force (FATF)

The Financial Action Task Force is an inter-governmental body that develops and promotes policies and standards to combat money laundering (the so-called *Forty Recommendations*) and terrorist financing (*Eight Special Recommendations on Terrorist Financing*).¹⁷⁰ It is housed at the Organization for Economic Cooperation and Development (OECD) in Paris. FATF currently has 33 members.¹⁷¹ According to its most recent mandate (May 2004, renewed until 2012):

FATF will continue to set anti-money laundering and counter-terrorist financing standards in the context of an increasingly sophisticated financial system, and work to ensure global compliance with those standards. FATF will enhance its focus on informal and non-traditional methods of financing terrorism and money laundering, including through cash couriers, alternative remittance systems, and the abuse of non-profit organizations.¹⁷²

FATF sets minimum standards and makes recommendations for its member countries. Each country must implement the recommendation according to its particular laws and constitutional frameworks. In 2001, FATF released *Eight Special Recommendations on Terrorist Financing*. These are very focused, and reflect a more nuanced understanding of how terrorist groups raise and transmit funds. The eight recommendations are:

1. Take immediate steps to ratify and implement the relevant United Nations instruments.

¹⁷⁰ See CRS Report RS21904: The Financial Action Task Force: An Overview.

¹⁷¹ See FATF website for a list of member countries and observer organizations [<http://www1.oecd.org/fatf/>]

¹⁷² *FATF Mandate Renewed for Eight Years*, May 14, 2004, available at [http://www1.oecd.org/fatf/pdf/PR-20040514_en.pdf]

2. Criminalize the financing of terrorism, terrorist acts and terrorist organizations.
3. Freeze and confiscate terrorist assets.
4. Report suspicious transactions linked to terrorism.
5. Provide the widest possible range of assistance to other countries' law enforcement and regulatory authorities for terrorist financing investigations.
6. Impose anti-money laundering requirements on alternative remittance systems.
7. Strengthen customer identification measures in international and domestic wire transfers.
8. Ensure that entities, in particular non-profit organizations, cannot be misused to finance terrorism.¹⁷³

Assessing Compliance

Early in its existence, FATF sought compliance with its guidelines in the international system (not just among FATF members) through a self-assessment program and a peer-evaluation process. This peer evaluation process has been successful in getting some FATF members to improve their anti-money laundering and counter-terrorist finance laws.

Through the evaluation process for the Forty Recommendations, FATF identifies non-cooperative countries and territories (NCCTs) in the fight against money laundering. The current list of NCCTs includes Cook Islands, Indonesia, Myanmar, Nauru, Nigeria, and the Philippines.¹⁷⁴ Some question whether “naming and shaming” is a good approach, and note that it may even prove counter-productive by signaling that a country is a good provider of black market money laundering services, and making it harder for the target country to change course.¹⁷⁵ Others argue that it is a necessary first step, but to be effective, countries must be offered technical assistance packages from the IMF or World Bank, or other international agencies to improve their legal and regulatory mechanisms.

Recently, FATF decided that it will no longer conduct self-assessment exercises based on previous exercises, but will initiate follow-up reports to mutual evaluations. The third round of mutual evaluations based on the new methodology is expected to begin in late 2004. There are no current plans for FATF to complete a similar list for countries that do not meet the Eight Special Recommendations.

¹⁷³ Financial Action Task Force *Terrorist Financing*, available at [http://www1.oecd.org/fatf/TerFinance_en.htm]

¹⁷⁴ Non-Cooperative Countries and Territories (NCCTs) Organization for Economic Cooperation and Development website, available at [http://www1.oecd.org/fatf/NCCT_en.htm]

¹⁷⁵ Donato Masciandaro, *Combating Black Money: Money Laundering and Terrorism Finance, International Cooperation and the G8 Role*, Universite de Lecce Economics Working Paper No. 56/26, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract_id=561183]

During 2003-2004, the IMF and the World Bank undertook a twelve-month pilot program that evaluated 33 countries and assessed their compliance with the FATF 40 + 8 recommendations.¹⁷⁶ In addition, eight countries were assessed either by FATF or one of the FATF Style Regional Bodies.¹⁷⁷ At the G-7 meeting in Boca Raton during February 2004, finance ministers requested the IMF to make the AML/CFT¹⁷⁸ assessments a normal component of its economic surveillance reports. In March 2004, the IMF and World Bank agreed to make permanent the pilot program, after a review. The three main findings of the IMF and World Bank pilot program were:

1. Many countries show a high level of compliance with the original FATF Forty Recommendations but compliance with the newer Eight Special Recommendations on Terrorist Financing is weaker. The necessary legislation to implement many of the new recommendations has not yet been adopted in the countries assessed.
2. Wealthier countries generally have well developed financial institutional regimes but require additional work on terrorism finance issues. Middle-income jurisdictions generally have well developed legal and institutional frameworks but frequently have gaps in implementation of the regime. Many lower-income countries have put in place the essential legal elements of an AML/CFT regime but implementation remains a challenge due to insufficient resources and training.
3. Implementation weaknesses identified include poor coordination among government agencies, ineffective law enforcement, weak supervision, inadequate systems and controls among financial firms, and shortcomings in international cooperation.¹⁷⁹

The IMF and World Bank also offered conclusions regarding seven of the Eight Special Recommendations:

1. **Ratification and Implementation of UN Instruments.** Almost one-third of the assessed countries failed to comply with this recommendation. Seven jurisdictions were found in material non-compliance (lack of

¹⁷⁶ International Monetary Fund and the World Bank, "Twelve-Month Pilot Program of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessments," available at [<http://www.imf.org/external/np/aml/eng/2004/031004.pdf>]

¹⁷⁷ The 41 countries assessed were Bangladesh, Honduras, Malta, Mauritius, Hong Kong SAR, United Kingdom, FYR Macedonia, Mozambique, Romania, Tanzania, Anguilla, British Virgin Islands, Guernsey, Isle of Man, Jersey, Liechtenstein, Montserrat, Czech Republic, Israel, Jordan, Oman, Austria, Japan, Kuwait, Singapore, Algeria, Kenya, Bahamas, Belize, Bermuda, Cayman Islands, Labuan (Malaysia), Turks & Caicos, South Africa, Russia, Germany, Swaziland, Bolivia, Ecuador, Chile, and Azerbaijan.

¹⁷⁸ Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT)

¹⁷⁹ International Monetary Fund, "IMF Executive Board Reviews and Enhances Efforts for Anti-Money Laundering and Combating the Financing of Terrorism" Public Information Notice No. 04/33, available at [<http://www.imf.org/external/np/sec/pn/2004/pn0433.htm>]

ratification of the ICSFT), and six were found non-compliant (failing to ratify the ICSFT and to implement UNSCR 1373).

2. **Criminalizing the Financing of Terrorism and Associated Money Laundering.** Serious weaknesses were found in more than a third of the countries. This special recommendation was one of the least observed FATF recommendations. Among the countries assessed, fourteen were found non-compliant and four materially non-compliant. In countries rated non-compliant, terrorist financing was not criminalized at all, nor was its prosecution possible under any other offense.
3. **Freezing and Confiscating Terrorist Assets.** Deficiencies were found in around a third of the countries assessed. There were six countries rated materially non-compliant and eight rated non-compliant. The Bank and Fund concluded that non-compliance resulted either from a lack of explicit legal authority to freeze funds or assets, or the lack or inadequacy of powers that would enable the authorities to seize assets, even if the legal provisions were in place.
4. **Reporting Suspicious Transactions Related to Terrorism.** Forty percent of countries exhibited weaknesses in this area. Countries showed a lack of legal and institutional measures that would require making a report to competent authorities when there is a suspicion that financial transactions are linked to terrorist financing.
5. **International Cooperation.** The mutual assistance and extradition in financing of terrorism-related cases is one of the least observed recommendations, almost half of the jurisdictions exhibited serious deficiencies. The World Bank and International Monetary Fund found, not surprisingly, that countries that had deficiencies with Recommendation 1 (criminalization of terrorist financing) and Recommendation 3 (freezing, seizure, and confiscation of terrorist funds) also had problems with international cooperation. This provides evidence for the assertion that lack of domestic law is a major cause of ineffective international cooperation.
6. **Alternative Remittance.** In most of the countries assessed, alternative remittance systems were not considered macro-economically relevant. Of the countries assessed, half were found deficient because money or value transfer systems were not required to be licensed or registered; or because preventive measures requirements were not extended to them; or because there was no effective regime for monitoring and enforcing compliance with AML/CFT requirements.
7. **Wire Transfers.** Due to ambiguity about whether the standard was or was not fully in force, this recommendation was not evaluated consistently across the sample countries. Of the rated countries, 12 were considered to be compliant, while 21 were materially non-compliant or non-compliant.

Weaknesses were largely due to lack of formal requirements that complete originator information be included on all wire transfers.¹⁸⁰

Experience under the pilot program with both assessments and with technical assistance considerably deepened collaboration between the IMF and World Bank, on one side, and the FATF and the FATF Style Regional Bodies (FSRBs) on the other. Recommendations for the IMF and World Bank on how to improve monitoring include the need for close coordination with FATF and FSRBs on the timing of assessments, more equitable sharing of the assessment burden among agencies, and broadening the responsibilities of IMF and World Bank staff for the supervision and integration of assessment missions to insure comprehensive and high quality assessments.

In addition to the pilot program, AML/CFT work has permeated IMF and World Bank activity. Numerous IMF products, including annual economic reports (Article IV Assessments) and the Reports on Standards and Codes, and Financial Sector Assessment Program reports consider issues relevant to terrorist financing.¹⁸¹ None of these reports constitutes a binding agreement. The legal basis for the IMF and World Bank's work on these issues is through its technical assistance function. The IMF and World Bank may offer advice and guidance, but it is the responsibility of the national governments to implement and enforce any new laws suggested by FATF's, IMF's, or the World Bank's recommendations.

Some analysts assert that the Middle East and North Africa are not properly represented in the IMF sample. Of the 41 countries assessed in the pilot program, three are in the Middle East or North Africa — Jordan, Oman, and Algeria. An assessment of numerous Islamic countries' compliance with international counter terrorist finance standards was undertaken by the Watson Institute for International Studies at Brown University under the auspices of the Council on Foreign Relations (CFR) Independent Task Force on Terrorist Financing. This report created four criteria to assess relative performance on counter terrorist finance work: (1) the establishment of a legal framework, (2) the administrative infrastructure, (3) the range of regulatory mechanisms, and (4) the evidence of enforcement.¹⁸² **Table 1** shows the report's findings:

¹⁸⁰ International Monetary Fund and World Bank, Twelve Month Pilot Program of Anti-Money Laundering and Combating Terrorist Financing of Terrorism (AML/CFT) Assessments, Joint Report on the Review of the Pilot Program. March 10, 2004.

¹⁸¹ See William E. Holder, "The International Monetary Fund's Involvement in Combating Money Laundering and the Financing of Terrorism," *Journal of Money Laundering Control*, Spring 2003, pg. 383-387.

¹⁸² See Council on Foreign Relations Independent Task Force on Terrorist Financing, "Update on the Global Campaign Against Terrorist Financing" Appendix C, "A Comparative Assessment of Saudi Arabia with Other Countries of the Islamic World."

Table 1. Middle Eastern Compliance with Counter-Terrorist Finance Activity

Relative Degrees of Compliance and Implementation				
	Strongest			Weakest
Legal Framework	Indonesia, Morocco, Saudi Arabia, Tunisia	Jordan, Malaysia, Pakistan	Egypt, UAE, Yemen	
Administrative Infrastructure		Egypt, Indonesia, Malaysia, Morocco, Saudi Arabia, UAE, Yemen	Jordan, Pakistan, Tunisia	
Regulatory Measures	UAE, Yemen	Egypt, Malaysia, Saudi Arabia	Indonesia, Jordan, Pakistan, Tunisia	Morocco
Enforcement		Pakistan, Saudi Arabia, UAE	Indonesia, Morocco, Yemen	Egypt, Jordan, Malaysia, Tunisia

Source: Council on Foreign Relations Independent Task Force on Terrorist Financing, "Update on the Global Campaign Against Terrorist Financing" Appendix C, "A Comparative Assessment of Saudi Arabia with Other Countries of the Islamic World."

According to the Watson Institute's report, Saudi Arabia's compliance with the guidelines established by FATF is "among the most robust in the sample."¹⁸³ A similar assessment of Saudi Arabia was reached by FATF in 2004.¹⁸⁴ The FATF 2004 annual report states that Saudi Arabia's legal and regulatory system is "compliant or largely compliant with most of the FATF 40+8 Recommendations" According to the report, Saudi Arabia has established a Permanent Committee on Combating the Financing of Terrorism to coordinate its policy response and the Saudi Anti-Financial Crime Unit (SAFCU). This is to serve as a clearinghouse for investigative information and international cooperation. At the time of the FATF review, the SAFCU was not operational.¹⁸⁵

¹⁸³ Ibid, pg. 8.

¹⁸⁴ See "Kingdom of Saudi Arabia: Executive Summary - FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism" in Annex C of the report Available at [http://www1.oecd.org/fatf/pdf/AR2004-Annexes_en.PDF].

¹⁸⁵ See CRS Report RL32499, *Saudi Arabia: Terrorist Financing Issues*.

Conclusion: Policy Issues for Congress¹⁸⁶

While the current campaign against terrorist finance reportedly has diminished terrorists' abilities to gather and transmit finances, significant funds still appear to be available. Efforts to further regulate and introduce transparency into the global financial system are welcome steps; yet they will not completely reduce terrorists' striking capacity because most of the proposed measures cannot with certainty separate out terrorists from other types of lawbreakers. Terrorists' ability to exploit non-bank mechanisms of moving and storing value, as well as their decentralized self-supporting network of cells represent additional constraints on law enforcement.

These constraints and concerns lead to numerous policy questions that may be relevant for Congress as it debates both a U.S. strategy to counter terrorist financing and on how to reorganize the U.S. government in order to best implement this strategy. Among those questions are:

- Should the U.S. strategy emphasize freezing assets or following financial trails? More importantly, should the U.S. government release a strategy document similar to the *National Money Laundering Strategy* devoted specifically to countering terrorist financing? Although freezing assets has been successful to date in blocking around \$200 million dollars, over the past two years, officials have noticed a major change in how terrorists move money around. Increasingly, they are relying on informal methods such as alternative remittance systems, smuggling commodities or precious metals, or simply transporting large amounts of cash. In this case, immediately freezing assets may prove counterproductive, if valuable intelligence could be gained if and when terrorist financing is spotted in the formal financial sector.
- Has the legislation that Congress passed regarding terrorist financing (primarily Title III of the USA PATRIOT Act) been implemented in a timely way? According to some, many financial institutions including insurance companies, loan and finance companies, and hedge funds, among others, have yet to receive formal guidance from the Treasury Department on how to implement anti-money laundering and terrorist financing guidelines.¹⁸⁷
- Are the resources currently devoted to combating terrorist financing adequate? There is no clear presentation of each federal agency's budget allocation for combating terrorist financing. House Report 108-599, the 2005 Foreign Operations Bill, referred to the Senate Committee on Appropriations on July 19th, 2004, states, among other

¹⁸⁶ This section was prepared by Martin A. Weiss/FDT.

¹⁸⁷ See Jonathan M. Winer, Testimony before the U.S. Senate Committee on Finance on "U.S. Government Efforts Against Terrorist Finance And Nominations of Stuart Levey and Juan Zarate," May 19th 2004, available at [<http://finance.senate.gov/hearings/testimony/2004test/051904jwtest.pdf>].

things, that the National Security Council and the Office of Management and Budget should conduct a cross-cutting analysis of the budgets and activities of all United States government agencies as they relate to terrorist financing, and submit a report, not less than 90 days after the enactment of the 2005 Appropriations Act, summarizing this information, with a classified annex if necessary.

- Does the current architecture of the U.S. government display clear jurisdiction among the various federal departments and agencies involved in the fight against terrorist financing? What future efforts can be put in place to further inter-departmental and inter-agency coordination on both policy-setting and enforcement? How well are the functions of the panoply of new and legacy departments and agencies being coordinated? Who is best suited to coordinate these functions?
- How well is the congressional oversight mechanism designed to assess federal performance on countering terrorist financing? The Senate Banking and Finance Committees agreed to joint jurisdiction over the Treasury's Office of Terrorism and Financial Intelligence. Many other Committees have potential relevance in the overall fight against terrorist financing. According to Former Representative Lee Hamilton, Vice Chairman of the 9/11 Commission, over 88 separate committees and subcommittees have oversight of the Homeland Security Department alone.¹⁸⁸ Reform of congressional jurisdiction is an historically tricky issue, yet some argue that reevaluating how Congress oversees the fight against terrorism and terrorist financing may lead to more effective Executive Branch action.
- Considering terrorists' increased use of alternative remittance systems, is there any way to regulate these practices? What would the costs be to register all informal money-transmitters and bring them in line with USA PATRIOT Act requirements? Many small remittance services cater to immigrant communities without reliable access to the formal banking sector. Making alternative remittance systems illegal is likely impractical, and could create a swell of resentment among the immigrant population in the U.S. If the U.S. government wants to license and regulate alternative remittance systems, some say it may be necessary to offer funds and technical assistance to small remittance providers to help insure their compliance.
- If someone at a charity is found to have transferred funds to a terrorist organization without the knowledge of either the

¹⁸⁸ See Lee Hamilton, Testimony before The Senate Governmental Affairs Committee, on "Reorganizing America's Intelligence Community: A View from the Inside" April, 16, 2004.

contributors or the charity management, should the U.S. government close down the charity completely, or try to isolate the “bad” money? Closing down the charity completely could create strong negative community feelings against the U.S. government, yet many agree that something must be done to regulate charitable donations. Currently, the Treasury Department has released *voluntary* guidelines for charitable organizations.¹⁸⁹ Should charities or non-profit organizations be held to a different standard than other financial institutions?

- Regarding cultural sensitivities, how should the United States government address a perceived bias against certain ethnic or religious groups? Among immigrant communities, there is often a fear of being unknowingly involved in terrorist financing. Treasury has already developed an outreach program to ease fears among immigrant communities. Are there additional actions that Treasury and/or the FBI can do to help improve community relations and make it easier for immigrant communities to fulfill their cultural and religious practices?
- How effectively is the United States cooperating with other countries, and insuring their cooperation in implementing and enforcing national regulations to restrict terrorist financing? If a U.S. bank, or charity, or remittance system is based in the U.S., or has U.S. operations, it is subject to U.S. jurisdiction. When such entities lie outside U.S. jurisdiction, the United States is often at the mercy of other governments to first enact legislation making terrorist financing illegal, and more importantly rigorously enforce this legislation. Creating a legal and regulatory system is likely meaningless if it is not enforced. As **Table 1** shows, in many countries, especially in the Middle East and North Africa, the legal, administrative, and regulatory infrastructure are being put in place, yet enforcement is still lacking.

¹⁸⁹ The voluntary guidelines for charities are available at [<http://www.treas.gov/press/releases/docs/tocc.pdf>].