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Terrorist Financing: U.S. Agency Efforts and Inter-Agency Coordination

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Terrorist Financing: U.S. Agency Efforts and Inter-Agency Coordination

Summary

Stopping the ability of terrorists to finance their operations is a key component of the U.S. counterterrorism strategy. To accomplish this, the Administration has implemented a three-tiered approach based on (1) intelligence and domestic legal and regulatory efforts; (2) technical assistance to provide capacity-building programs for U.S. allies; and (3) global efforts to create international norms and guidelines.

Effective implementation of this strategy requires the participation of, and coordination among, several elements of the U.S. Government. This report provides an agency-by-agency survey of U.S. efforts. This report will be updated as events warrant.

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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's strategy to combat terrorist financing was focused foremost on freezing terrorist assets. According to the U.S. Department of the Treasury, the aim of U.S. policy was "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, however, the freezing of terrorist assets slowed down considerably.

According to the Department of the Treasury's *Terrorist Assets Report*, as of December 2004, programs targeting assets of international terrorist organizations have resulted in the blocking in the United States of almost \$10 million. Of the \$1.6 billion in state sponsors of terrorism's assets located in the United States, \$1.5 billion have been frozen by U.S. economic sanctions. Of that \$1.5 billion, the assets of Libya, which were blocked on September, 20, 2004, made up all but \$425 million.³

According to many analysts, these numbers are very small and seem to support the 9/11 Commission's conclusion that 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."⁴

As detailed in the March 2005 U.S. Department of State *International Narcotics Control Strategy Report*,⁵ the United States has a three-tiered anti-money laundering-counter-narcotics/counterterrorist financing strategy that employs:

¹ This section was prepared by Martin A. Weiss/Foreign Affairs Defense and Trade Division (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 *Terrorist Assets Report*, Department of the Treasury, available at [<http://www.treas.gov/offices/enforcement/ofac/reports/tar2004.pdf>].

⁴ 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>].

⁵ 2005 International Narcotics Control Strategy Report, Department of State, available at [<http://www.state.gov/g/inl/rls/nrcrpt/2005/>].

- Traditional and non-traditional law enforcement techniques and intelligence operations to disrupt and dismantle terrorist financiers networks. (These efforts may include investigations, diplomatic actions, criminal prosecutions, designations, among other actions);
- Capacity building programs to improve the domestic financial, legal, and regulatory institutions of U.S. allies; and
- Global efforts to deter terrorist financing.

Implementing this strategy requires coordination of many different elements of national power including intelligence gathering, financial regulation, law enforcement, and building international coalitions. Following a review of legislation on terrorist financing, this report provides an agency-by-agency survey of these U.S. efforts.⁶

Legislation on Terrorist Financing⁷

“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 stepped up its efforts 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.

The Bank Secrecy Act. Congress laid the foundations of the federal anti-money laundering (AML) framework in 1970 when it passed the BSA,⁸ the major money laundering provisions of which make up the Currency and Foreign Transaction Reporting Act (CFTRA). The BSA framework focuses on financial institutions’ record-keeping, so that federal agencies are able to apprehend criminals

⁶ 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*; CRS Report RL31658, *Terrorist Financing: The U.S. and International Response*; and CRS Report RL32499, *Saudi Arabia: Terrorist Financing Issues*.

⁷ This section was prepared by Nathan Brooks/American Law Division (ALD).

⁸ 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.).

by tracing their money trails.⁹ 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 civil¹⁰ and criminal¹¹ 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.¹² The Secretary has set the amount for filing these currency transaction reports (CTRs) at \$10,000.¹³ 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.¹⁴

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.¹⁵ 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 \$10,000.¹⁶

The Internal Revenue Service has certain authorities and responsibilities under the BSA (see p.21).

The International Emergency Economic Powers Act. Under the International Emergency Economic Powers Act¹⁷ (IEEPA), enacted in 1977, the President has broad powers pursuant to a declaration of a national emergency with 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.”¹⁸ These powers include the ability to seize foreign assets under U.S. jurisdiction, to prohibit any transactions in foreign exchange, to prohibit payments

⁹ “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).

¹⁰ *Id.* at § 5321.

¹¹ *Id.* at § 5322.

¹² 31 U.S.C. § 5313(a).

¹³ 31 C.F.R. § 103.22(b)(1).

¹⁴ 31 C.F.R. § 103.18.

¹⁵ 31 U.S.C. § 5314.

¹⁶ 31 U.S.C. § 5316.

¹⁷ Title II of P.L. 95-223 (codified at 50 U.S.C. § 1701 et seq.).

¹⁸ 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.

between financial institutions involving foreign currency, and to prohibit the import/export of foreign currency.¹⁹

The Money Laundering Control Act. Congress criminalized money laundering in 1986 with the passage of the Money Laundering Control Act.²⁰ 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.²¹ 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.²²

The Annunzio-Wylie Anti-Money Laundering Act. With the passage of the Annunzio-Wylie Anti-Money Laundering Act²³ in 1992, Congress increased the penalties for depository institutions that violate the federal anti-money laundering 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.²⁴ 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,²⁵ and gave the Federal Deposit Insurance Corporation (FDIC) the authority to terminate federal insurance for guilty state banks and savings associations.²⁶ The

¹⁹ 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 maintains this specially designated nationals (SDN) list, which can be found at [<http://www.ustreas.gov/offices/eotffc/ofac/sdn/>].

²⁰ P.L. 99-570, § 1352 (codified, as amended, at 18 U.S.C. §§ 1956-1957).

²¹ 18 U.S.C. § 1956.

²² 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.

²³ Title XV of P.L. 102-550 (codified at various sections of Titles 12 and 31 of the U.S. Code).

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

²⁵ 12 U.S.C. § 93(c).

²⁶ 12 U.S.C. § 1818(w).

Annunzio-Wylie Act also introduced federal penalties for operating money transmitting businesses²⁷ operating without licenses under state law.²⁸

The Money Laundering Suppression Act. In the early 1990's it became apparent that the number of currency transaction reports being filed greatly surpassed the ability of regulators to analyze them. So, in 1994, Congress passed legislation²⁹ mandating certain exemptions from reporting requirements in an effort to reduce the number of CTR filings by 30%.³⁰ In addition, the act directed the Treasury Secretary to designate a single agency to receive suspicious activity report filings.³¹ 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.³²

The Money Laundering and Financial Crimes Strategy Act. Congress in 1998 directed the Treasury Secretary to develop a national strategy for combating money laundering.³³ 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).³⁴ In addition, the Treasury Secretary may issue grants to state and local law enforcement agencies for fighting money laundering in HIFCAs.³⁵

Title III of the USA PATRIOT Act. In the wake of the terrorist attacks of September 11, 2001, Congress passed the USA PATRIOT Act.³⁶ Congress devoted Title III of this act to combating terrorist financing.³⁷ Given that funds used to

²⁷ 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.

²⁸ 18 U.S.C. § 1960.

²⁹ Title IV of P.L. 103-325 (codified at various sections of Title 31 of the U.S. Code).

³⁰ 31 U.S.C. § 5313 note.

³¹ *Id.* at § 5318 note.

³² 12 U.S.C. § 5312(a)(2)(X).

³³ P.L. 105-310 (codified at 31 U.S.C. § 5340 et seq.).

³⁴ 31 U.S.C. § 5342. As of June 2005, seven such areas have been designated as HIFCAs: New York/New Jersey; San Juan/Puerto Rico; Los Angeles; the southwestern border, including Arizona and Texas; the Northern District of Illinois (Chicago); the Northern District of California (San Francisco); and South Florida (Miami). *See IRS, Criminal Investigation's (CI) Role on Terrorism Task Forces*, available at: [<http://www.irs.gov/compliance/enforcement/article/0,,id=107510,00.html>].

³⁵ 31 U.S.C. § 5354.

³⁶ P.L. 107-56. The acronym USA PATRIOT stands for “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorists.”

³⁷ This Title is called the International Money Laundering Abatement and Anti-Terrorist (continued...)

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.³⁸

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 United States are of primary money laundering concern.³⁹ 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-through⁴⁰ and correspondent accounts.⁴¹ The Treasury Secretary is also empowered to prohibit or restrict the opening of these payable-through and correspondent accounts,⁴² and U.S. financial institutions are required to establish internal procedures to detect money laundered through these accounts.⁴³ 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.⁴⁴ Institutions are subject to fines of up to \$1 million for violations of these provisions.⁴⁵

Title III allows for judicial review of assets seized due to suspicion of terrorist-related activities and the applicability of the “innocent owner” defense,⁴⁶ 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

³⁷ (...continued)

Financing Act. For a more detailed discussion of Title III of the USA PATRIOT Act, see CRS Report RL31208, *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Title III of P.L. 107-56*, by M. Maureen Murphy.

³⁸ 18 U.S.C. § 2339B.

³⁹ 31 U.S.C. § 5318A(a).

⁴⁰ “Payable through accounts” are generally checking accounts marketed to foreign banks that would not otherwise have the ability to offer their customers access to the U.S. banking system.

⁴¹ “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.

⁴² 31 U.S.C. § 5318A(b).

⁴³ 31 U.S.C. § 5318(i).

⁴⁴ 31 U.S.C. § 5318(j).

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

⁴⁶ 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.⁴⁷ 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.⁴⁸

The USA PATRIOT Act permits forfeiture of property traceable to proceeds from various offenses against foreign nations.⁴⁹ 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.⁵⁰ Forfeiture is also authorized for currency reporting violations and violations of BSA prohibitions against evasive structuring of transactions.⁵¹

Title III requires each financial institution to establish an anti-money laundering 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 anti-money laundering program.⁵² 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.⁵³ 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.⁵⁴ Financial institutions are allowed to include suspicions of illegal activity in written employment references regarding current or former employees.⁵⁵

Title III extends the Suspicious Activity Reports filing requirement to broker-dealers,⁵⁶ and gives the Treasury Secretary the authority to pass along SARs to U.S. intelligence agencies in order to combat international terrorism.⁵⁷ Anyone engaged in a trade or business who receives \$10,000 cash in one transaction must file a report with the Treasury Department's Financial Crimes Enforcement Network (FinCEN) identifying the customer and specifying the amount and date of the transaction.⁵⁸ In

⁴⁷ P.L. 107-56, § 316 (codified at 18 U.S.C. § 983 note)

⁴⁸ P.L. 107-56, § 317.

⁴⁹ 18 U.S.C. § 981(a)(1)(B).

⁵⁰ 18 U.S.C. § 981(k).

⁵¹ 31 U.S.C. § 5317(c).

⁵² 31 U.S.C. § 5318(h).

⁵³ 31 U.S.C. § 5318(k)(2).

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

⁵⁵ 12 U.S.C. § 1828(w).

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

⁵⁷ P.L. 107-56, § 358 (codified at 31 U.S.C. § 5319; 15 U.S.C. § 1681v).

⁵⁸ 31 U.S.C. § 5331. This is a separate requirement from the one codified at 31 U.S.C. § (continued...)

addition, the USA PATRIOT Act makes it a crime to knowingly conceal more than \$10,000 in cash or other monetary instruments and attempt to transport it into or outside of the United States. 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.⁵⁹

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.⁶⁰ 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.⁶¹

Under Title III, FinCEN has statutorily-based authority to conduct its duties within the Treasury Department.⁶² Significantly, the act requires FinCEN to maintain a highly secure network so that financial institutions can file their BSA reports electronically.⁶³

The Suppression of the Financing of Terrorism Convention Implementation Act. In order to implement the International Convention for the Suppression of the Financing of Terrorism, Congress in 2002 made it a crime to collect or provide funds to support terrorist activities (or to conceal such fund-raising efforts), regardless of whether the offense was committed in the United States or the accused was a United States citizen.⁶⁴

The Intelligence Reform and Terrorism Prevention Act of 2004. Section 362 of the USA PATRIOT Act required the Secretary of the Treasury to establish within FinCEN a “highly secure network” to process BSA reports and to provide information to financial institutions regarding patterns of suspicious activity gleaned from these reports. With the passage of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Congress authorized the appropriation of \$16.5 million for the development of FinCEN’s “BSA Direct” program, which is designed to improve the aforementioned network by making it easier for law enforcement to access BSA filings and improving overall data management.⁶⁵ The act also authorizes an additional \$19 million for improvements related to — among

⁵⁸ (...continued)
5313.

⁵⁹ *Id.* at § 5332.

⁶⁰ 31 U.S.C. § 5318(l).

⁶¹ 31 U.S.C. § 5318(h)(3). “Concentration accounts” comingle the bank’s funds with those in individual accounts, making it difficult to determine who owns specific funds and why funds are being moved.

⁶² 31 U.S.C. § 310.

⁶³ P.L. 107-56, § 362 (codified at 31 U.S.C. § 310 note).

⁶⁴ Title II of P.L. 107-197 (codified at 18 U.S.C. § 2339C).

⁶⁵ P.L. 108-458, § 6101(2).

other things — telecommunications and analytical technologies,⁶⁶ and makes permanent the amendments to the BSA contained in Title III of the USA PATRIOT Act.⁶⁷

The Intelligence Reform and Terrorism Prevention Act of 2004 requires the Treasury Secretary to issue regulations mandating the reporting of cross-border transmittals by certain financial institutions,⁶⁸ and to submit a report to Congress on the Treasury Department's efforts to combat money laundering and terrorist financing.⁶⁹ In addition, under IRTPA, a federal financial institution examiner who leaves the federal government is required to wait one year before accepting a job with an institution that the examiner was responsible for examining.⁷⁰

The Intelligence Community⁷¹

In approving the Intelligence Reform and Terrorism Prevention Act of 2004, Congress established the position of the Director of National Intelligence (DNI) and created the new National Counterterrorism Center (NCTC), where a panoply of the U.S. Government's counterterrorism organizations are now co-located under the DNI's control. Among them is the Foreign Terrorist Asset Targeting Group (FTATG), the Executive Branch's principal inter-agency analytic group, which is charged with assessing intelligence on terrorist financing, and providing the National Security Council's (NSC) Terrorist Finance Policy Coordinating Committee (PCC) "intelligence assessments" of individuals and groups suspected of financially supporting terrorists.

FTATG engages in joint discussions with member agencies of the Targeting Action Group under the Terrorist Financing PCC, developing suggested actions — ranging from the freezing of assets to diplomatic options — that policymakers can consider taking against suspected terrorist financiers.

Although FTATG's first two directors were Immigration and Custom Enforcement detailees, the NSC in November 2004 restructured FTATG and named a Federal Bureau of Investigation special agent as director and an Immigration and Customs Enforcement (ICE) special agent as deputy director. Until then, both positions had been vacant for eight months, a period during which FTATG

⁶⁶ *Id.*

⁶⁷ Section 303 of the USA PATRIOT Act had given Congress the power to terminate Title III by passing a joint resolution. IRTPA struck section 303 from the USA PATRIOT Act. P.L. 108-458, § 6204.

⁶⁸ *Id.* at § 6302.

⁶⁹ *Id.* at § 6303(a).

⁷⁰ *Id.* at § 6303(b). In passing IRTPA, Congress also expressed its general sense that the Treasury Secretary should work to strengthen international money laundering efforts, and required the Secretary to report to Congress on these efforts. *Id.* at § 7701 - 7704.

⁷¹ This section was prepared by Alfred Cumming/FDT.

founded, according to some observers. As part of the restructuring, the NSC narrowed FTATG's focus to providing intelligence assessments of terrorist financing targets designated by the NSC's Terrorist Financing PCC. Prior to the restructuring, FTATG in some instances would identify targets, but now serves strictly as the NSC's research arm. In January 2005, FTATG's member agencies⁷² each committed to providing staff to serve at FTATG. The Group currently has slightly over half its staff complement in place.

In May 2000 President Bill Clinton announced the establishment of the Foreign Terrorist Asset Tracking Center (FTATC), FTATG's predecessor,⁷³ as part of a \$300 million counterterrorism initiative, \$100 million of which was to be used to establish FTATC and target terrorist financing.⁷⁴ Congress authorized funding in October 2000.⁷⁵

The Clinton initiative followed the prevention the previous year of a planned series of Osama Bin Laden terrorist attacks to mark the Millennium. Although the Intelligence Community (IC) successfully disrupted those attacks before they could occur, Administration officials remained troubled by the IC's continuing inability to identify, track and disrupt al Qaeda's financial support network.⁷⁶

Vowing to gain a better understanding of the terrorists' financial network — particularly its fund-raising component — White House officials conceived of and pushed for the establishment of FTATC as a way to improve the government's

⁷² Department of Homeland Security-ICE; the National Security Agency (NSA), Central Intelligence Agency (CIA), Department of State (State); Treasury, to include the Office of Foreign Asset Control (OFAC) and FinCEN (Financial Center); the Defense Intelligence Agency at Department of Defense; and the Department of Homeland Security.

⁷³ The name of the organization has changed, and so, over time, has its mission. Initially, FTATC was housed at the Treasury Department's OFAC, where it provided OFAC terrorist financing intelligence analysis. Its successor, FTATG, is co-located with NCTC and other federal counterterrorist entities at the Liberty Crossing facility, located at Tysons Corner, Virginia. FTATG provides the NSC intelligence assessments of individuals and groups financing terrorism, and in conjunction with its member agencies, suggests actions policymakers could take to combat specific terrorist financing targets.

⁷⁴ See Douglas Farah, "Blood From Stones: The Secret Financial Network of Terrorism," *Broadway Books*, New York, New York, May 2004, p. 193.

⁷⁵ See Myron Levin and Josh Meyer, "Officials Fault Past Efforts on Terrorist Assets," *Los Angeles Times*, Oct. 16, 2001.

⁷⁶ The 9/11 Commission Report, *National Commission on Terrorist Attacks Upon the United States*, July 22, 2004, p. 186. According to the Commission (p. 185), 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 intentions. As a result, the CIA placed little emphasis on terrorist financing."

understanding of how terrorists fund their operations.⁷⁷ Officials envisioned FTATC as an inter-agency all-source terrorist-financing intelligence analysis center, and successfully pushed to have it located at the Department of the Treasury.⁷⁸ But, at the time, some of the key agencies expected to participate and contribute resources, including the Treasury Department itself, did not attach a priority to collecting and analyzing terrorist financing intelligence. Indeed, Treasury officials made no mention of terrorist financing in their national security money laundering strategy.⁷⁹ The CIA, in turn, saw little utility in tracking terrorist financing.⁸⁰ Despite this skepticism, President Bush's National Security Adviser Condoleezza Rice determined by spring of 2001 that terrorist financing proposals were worth pursuing. By this time, a year had passed since the Clinton White House initially established terrorist finance analysis as a priority, and, yet, the Treasury Department still had not stood up a center. Instead, Treasury officials continued their planning, intending at some future point to establish a 24-analyst strong office.⁸¹

On the eve of the September 11, 2001 attacks, Treasury still had taken no concrete steps to establish a center. By then, sixteen months had passed since the Clinton Administration announced its intention to establish the Center. More than seven months had elapsed since the incoming Bush Administration had adopted the concept. And despite numerous post-9/11 declarations to the contrary⁸² — FTATC, prior to 9/11, remained a plan rather than a reality. Even before the 9/11 attacks, signs of frustration were becoming evident. Treasury officials had begun blaming CIA for adopting a posture of “benign neglect” toward FTATC.⁸³

Three days after the terrorist attacks of September 11th, Treasury officials finally took action, establishing the Center⁸⁴ and placing it under the control of the Department's Office of Foreign Asset Control. At the time, a Treasury spokeswoman denied that there had been any unusual delay in launching the Center, citing the logistical difficulties involved in bringing together representatives of a number of

⁷⁷ Ibid, p. 186.

⁷⁸ Ibid, p. 186. Shortly after former Special Advisor to the President Richard Clarke and the NSC decided to advocate the creation 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 create a unit within the Treasury Department's OFAC that blended the expertise of Treasury agencies with that of the CIA, FBI and NSA, and was dedicated to targeting terrorist financing. The Commission further recommended that such a center should support more aggressive efforts by OFAC to freeze the assets of those individual or groups funding terrorists.

⁷⁹ Ibid, p. 186.

⁸⁰ Ibid, p. 505, FN No. 88.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ See Myron Levin and Josh Meyer, “Officials Fault Past Efforts on Terrorist Assets,” *Los Angeles Times*, Oct. 16, 2001.

investigative agencies. Senator Charles E. Grassley, however, expressed concern as to whether the delay “is indicative of larger problems.”⁸⁵

Initially, the Center was comprised of the same member agencies as Operation Green Quest, a multi-agency, financial enforcement initiative set up to identify, disrupt, dismantle and ultimately “bankrupt” terrorist networks and their sources of funding.⁸⁶ FTATC’s mission was to provide intelligence assessments of individual and group terrorist financing targets identified by Green Quest, which was responsible for conducting investigative operations.⁸⁷

In September 2001, the Senate Select Committee on Intelligence (SSCI), in a report accompanying its approved fiscal year (FY) 2002 intelligence authorization bill, endorsed IC efforts to exploit financial intelligence, and noted that the Treasury Department’s FTATC concept showed promise in providing terrorist financial analysis. But the Committee cautioned that FTATC, “...to the extent it will function as an element of the Intelligence Community, has not been coordinated adequately with the Director of Central Intelligence nor reviewed by this Committee.”⁸⁸ The Committee directed the DCI and the Treasury Secretary to jointly prepare 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 Committee instructed that the report contain an evaluation of FTATC’s suitability for the task and, if appropriate, a plan for FTATC’s development.⁸⁹

By May 2002, the Executive Branch had yet to complete the requested report, despite a subsequent statutory requirement contained in the USA PATRIOT Act requiring that it do so. The SSCI noted its dissatisfaction and included a provision in the FY2003 intelligence authorization, subsequently approved by the House, establishing the FTATC at CIA, and placing it under DCI control.⁹⁰

⁸⁵ Ibid.

⁸⁶ The following Treasury Department agencies participated in Green Quest: U.S. Customs Service, the Internal Revenue Service, the Financial Crimes Enforcement Network (FinCEN), the Office of Foreign Assets Control, and the Secret Service. (The Department of Homeland Security has since absorbed some of these agencies). The FBI and the Department of Justice also participated in Green Quest.

⁸⁷ See prepared comments of Treasury Undersecretary James Garule, October 25, 2001, announcing the Green Quest initiative. See also U.S. Customs press release October 25, 2001, announcing Operation Green Quest.

⁸⁸ See Senate Report 107-63, Sept. 14, 2001, pp. 10-11, which accompanied S. 1428, the SSCI-approved Fiscal Year 2002 Intelligence Authorization Bill.

⁸⁹ Ibid, pp. 10-11.

⁹⁰ 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
(continued...)

Despite the statutory requirement that the FTATC be under the DCI's control, the Executive Branch placed FTATC under the supervision of the NSC's Office of Combating Terrorism. As noted earlier, the Executive Branch also renamed FTATC. Following the enactment of the 2004 Intelligence Reform Act, the DNI assumed control of FTATG.

The Interagency Process⁹¹

The National Security Council 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 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 11.⁹² Since the introduction of the PCC, 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.”⁹³

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

⁹⁰ (...continued)

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.

⁹¹ This section was prepared by Richard Best/FDT.

⁹² 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.

⁹³ Council on Foreign Relations, Report of an Independent Task Force, *Terrorist Financing*, New York, 2002, pp. 32-33.

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 the conduct of operations. This compromises their oversight role and usurps the responsibilities of the departments and agencies.”⁹⁴ 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 Institutions⁹⁵

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 that could be helpful in detecting, disrupting, and preventing the use of the nation’s financial system by terrorists and terrorist organizations. Congress has statutorily required new reporting to improve the timeliness of terrorist financing detection, suppression, and control. 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. Figures for this kind of activity have been available only with a long time lag. Even longer lags characterize Inspector General and reported internal assessments of the effectiveness of antiterrorist financing efforts.

Parts of the USA PATRIOT Act are scheduled to expire on December 31, 2005. Different legislation has been passed by both houses that would reauthorize these sections (H.R. 3199 and S. 1389).⁹⁶ While the expiring provisions of the act are nonfinancial (Title II), congressional reauthorization initiatives might well expand to amend the financial Title III. And according to Senate Banking Committee Chairman Richard Shelby: “The Committee will continue its thorough series of hearings on terror finance. As part of our country’s anti-terror efforts, the Committee will continue to conduct hearings and a review of our national money laundering

⁹⁴ 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.

⁹⁵ This section was prepared by Walter Eubanks and William D. Jackson/Government and Finance Division (G&F).

⁹⁶ For information on legislative proposals reauthorizing sections of the USA PATRIOT Act, see CRS Report RS22196, *USA PATRIOT Act Reauthorization Proposals and Related Matters in Brief*.

strategy.”⁹⁷ The Government Accountability Office (GAO) has a study under way for this Committee on such policies and practices.⁹⁸

The Offices Within the Department of the Treasury. Offices within the 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 Bank Secrecy Act 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 frameworks for anti-money laundering and terrorist financing efforts internationally. Two offices with antiterrorist financing responsibilities within TFI are the Office of Foreign Assets Control and the Financial Crimes Enforcement Network.

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 Suspicious Activity Reports and Currency Transaction Reports from reporting financial institutions (with assistance from the Internal Revenue Service), 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 been eight *SAR Activity Reviews* issued since October 2000, the most recent dated April 2005 and covering data through June 2004. Between April 1, 2003, and June 30, 2004, 2175 suspicious activity reports were submitted to FinCEN of which 51% came from money services businesses and 47% came from depository institutions. The rest came from casinos and securities and futures institutions.⁹⁹ SARs from depository institutions are responsible for most of the reporting accuracy problems. Nevertheless, 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 conducting of criminal investigations.

⁹⁷ Senate Committee on Banking, Housing, and Urban Affairs. Press Release, Jan. 19, 2005, [http://banking.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=177&Month=1&Year=2005].

⁹⁸ Testimony of Davi M. D’Agostino, Director of Financial Markets and Community Investment of the United States Government Accountability Office, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, June 3, 2004. [http://banking.senate.gov/_files/dagostino.pdf]

⁹⁹ FinCEN, *The SAR Activity Review Trends, Trip & Issues*, April, 2005, 50 p. [<http://www.FinCEN.gov>].

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.¹⁰⁰

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. In June 2004, the IG testified that subsequent audits revealed little or no improvement.¹⁰¹ More recent IG reports on FinCEN and the use of FinCEN's BSA e-filing of SAR reports continues to give FinCEN low grades in eliminating ongoing problems concerning enforcement of the Bank Secrecy Act and USA PATRIOT Act.¹⁰²

Following the IG audit, FinCEN announced it would collect information from the agencies responsible for Bank Secrecy Act compliance on their examination procedures, cycles and resources; on any significant deficiencies in reporting by financial institutions; and other data including formal and informal actions taken by regulators to correct reporting failures by financial institutions. FinCEN has created an internal Office of Compliance to support the work of 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 lists those persons, groups, or countries whose transactions it has been instructed to block or assets to be frozen by financial institutions. OFAC has close working relations with the financial regulatory community and maintains telephone "hotlines" through which it receives information about in-progress questionable transactions. OFAC also works closely with the

¹⁰⁰ 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>]

¹⁰¹ 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.

¹⁰² The Department of the Treasury, Office of the Inspector General, *Audit Report: FinCEN: Heightened Management Attention Needed Over Longstanding SAR Data Quality Problems*, OIG 05-033, Mar. 23, 2005. and The Department of the Treasury, Office of the Inspector General, *Terrorist Financing /Money Laundering: Additional Outreach and System Enhancements are Needed to Encourage Greater Use of FinCEN's BSA E-Filing*, OIG-05-034, Mar. 31, 2005.

Federal Bureau of Investigation and with the Department of Commerce's Office of Export Enforcement, and cooperates with the United Nations in imposing sanctions on foreign governments.

The most recent IG audit was completed in April 2002 and concluded that OFAC is hampered 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 that 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 transactions and did not report blocked assets.¹⁰³

The Intelligence Reform and Terrorism Prevention Act of 2004 addressed financial sector counterterrorism. Section 6303 required the Treasury Secretary to report on governmental ways to curtail terrorist financing, including organizational changes as well as procedural ones. Section 7802 stated that: "It is the sense of Congress that the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, other Federal agency partners, and private-sector financial organization partners, should — (1) furnish sufficient personnel and technological and financial resources to educate consumers and employees of the financial services industry about domestic counter terrorist financing activities, particularly about — (A) how the public and private sector organizations involved in such activities can combat terrorism while protecting and preserving the lives and civil liberties of consumers and employees of the financial services industry; and (B) how the consumers and employees of the financial services industry can assist the public and private sector organizations involved in such activities; and (2) submit annual reports to Congress on efforts to accomplish subparagraphs (A) and (B)...."

President Bush's FY2006 budget request for the Treasury Department includes more funding for combating terrorist and other illegal financing. FinCEN would receive \$73.6 million in directly appropriated funds, an increase of about 2%. In addition, \$1.5 million would flow into FinCEN as offsets and reimbursements from other agency accounts. TFI's new internal Office of Intelligence Analysis would essentially double in size, receiving \$1.8 million in funding. OFAC would receive \$23.8 million, up almost 8%. Additional funding of \$0.6 million would increase TFI's other efforts to detect illegal activities.¹⁰⁴

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 to do so, however, any of the regulators may carry out a special BSA examination.

¹⁰³ Schindel, p. 4.

¹⁰⁴ "President Bush Requests More Funds for Bank Secrecy Act Oversight in Budget," *Daily Report for Executives*, Feb. 8, 2005, p. B-18.

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 has formed 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.¹⁰⁵

For federal budgetary purposes, the financial regulatory agencies are essentially self-funding. Thus, most of their increasing spending on antiterrorist and money laundering efforts comes from general operating funds, including assessments and fees on their regulated institutions and portfolio interest earnings, rather than federal appropriations.

The Office of the Comptroller of the Currency (OCC) 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, it reviews internal controls, internal and external audits, and BSA compliance. According to the OCC, it conducted about 1,340 BSA examinations of 1,100 institutions in 2003, and nearly 5,000 BSA examinations of 5,300 institutions since 1998.¹⁰⁶

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

¹⁰⁵ 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 Revenue Service.

¹⁰⁶ 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>]

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.”¹⁰⁷ 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. Riggs has ended operations and has been sold to PNC Financial Services Group.

The Federal Reserve System (Fed) supervises about 950 state-chartered commercial banks that are members of the system and more than 5,000 bank 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. Regulators’ 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, it 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 action.¹⁰⁸ 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.¹⁰⁹ It also sanctioned the holding company for Riggs Bank.¹¹⁰

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. It also insures 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

¹⁰⁷ Stipano, p. 9.

¹⁰⁸ 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]

¹⁰⁹ R. Christian Bruce, “Fed Fines Switzerland’s UBS for Illegal Dollar Transactions,” *Daily Report for Executives*, May 11, 2004, p. A-10.

¹¹⁰ “PNC, Riggs Merger Salvaged After Riggs Agrees to Reduced Takeover Price,” *Daily Report for Executives*, Feb. 11, 2005, p. A-37.

institutions and bans or civil fines against three individuals for violations. The FDIC also has taken 53 informal actions since 2001.

The Inspector General 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 judged to be 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.¹¹¹ 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 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 eleven. 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 cases.

The National Credit Union Administration (NCUA) currently regulates 8,945 federally chartered credit unions and another 3,442 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 filings for some customers.¹¹²

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

¹¹¹ D'Agostino Testimony.

¹¹² Ibid.

following the on-site examinations. NCUA actions are generally informal but may involve memoranda of understanding.¹¹³

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 efficient mechanisms 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 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. These examinations resulted in 238 audit reports of which 54 reflected anti-money laundering deficiencies

¹¹³ 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]

at nine merchants and 45 brokers. Primary deficiencies cited were failures to comply with annual audit and training requirements.¹¹⁴

Internal Revenue Service¹¹⁵

To help finance its operations and its many spending 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 fees — except customs duties — is the Internal Revenue Service (IRS). In managing that huge responsibility, the IRS receives and processes tax returns and related documents, payments, and refunds, enforces compliance with tax laws and regulations, collects overdue taxes, and provides a variety of services to taxpayers intended to answer questions, help them understand their rights and responsibilities under the tax code, and resolve disputes in ways that seek to avoid protracted and costly litigation.

Role in Government's Campaign Against Terrorist Financing

The IRS also contributes to current efforts by the federal government to uncover, disrupt, and staunch the flow of funds to terrorist groups, especially those expressing implacable hostility toward the United States. These efforts involve the use of a variety of weapons, including the collection and analysis of financial intelligence, diplomatic pressure, regulatory actions, administrative sanctions, and criminal investigations and prosecutions. The IRS's role rests on the agency's wealth of experience and expertise in tax law enforcement. For the most part, it consists of providing analytical and resource support for investigations (many done in concert with other federal agencies) of possible links between terrorist groups and actual or alleged violations of the financial reporting requirements of the Bank Secrecy Act of 1970, money laundering schemes, and the diversion of funds from tax-exempt charities. The IRS is responsible for enforcing compliance with the BSA for all non-banking financial institutions not regulated by another federal agency, including money service businesses (MSBs), casinos, and credit unions.

Capabilities and Resources

The current allocation of funds among major IRS operations suggests to some that exposing and disrupting the flow of funds to terrorist organizations hostile to the United States is not an especially high priority for the IRS. In FY2005, the IRS is receiving \$10.236 billion in appropriated funds. Of this total, \$4.363 billion (or nearly 43%) is designated for tax law enforcement, the appropriations account from which the IRS funds its contributions to the federal government's campaign against terrorist financing. While there is no specific line item in the IRS budget for activities related to terrorist financing, the agency estimates that its spending for this purpose in FY2005 may total \$31.2 million, up from between \$20 and \$25 million

¹¹⁴ CFTC communication with CRS, August 2004.

¹¹⁵ This section was prepared by Gary Guenther/G&F

in FY2004.¹¹⁶ This amounts to 0.7% of its budget for tax law enforcement and slightly more than 0.3% of its total budget. It is not clear from available information how much the IRS is likely to spend on activities related to terrorist financing in FY2006.

IRS's contribution to the government's campaign against terrorist financing draws mostly on the resources of three of its operating divisions: Criminal Investigation (CI), the Small Business and Self-Employed Taxpayers Division (SB/SE), and the Tax-Exempt and Government Entities Division (TE/GE).

The principal division, as measured by resources devoted to investigating and opposing terrorist financing, seems to be CI, whose main function is to investigate instances of alleged tax evasion and other financial crimes related to tax administration. In recent decades, CI has become increasingly involved in investigations of possible violations of anti-money laundering and financial reporting statutes. CI uses BSA and money-laundering statutes to investigate and prosecute criminal conduct related to the tax code, such as abusive tax shelters, offshore tax evasion, and corporate fraud. CI also investigates failures to file Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business) and criminal violations of the BSA, including the structuring of deposits to avoid the reporting requirements for currency transactions. As a result, the division has become adept at exposing 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. In the aftermath of the terrorist attacks of September 11, 2001, CI has been adapting this capability to the special requirements of exposing, tracking, and dismantling the sources of terrorist financing. This is no easy task, partly because terrorist groups and their financiers are constantly adjusting to efforts by major countries like the United States to stop the flow of funds to these groups. These groups are beginning to rely on methods of moving funds outside formal financial systems such as the use of cash couriers and alternative remittance systems. In FY2005, CI's spending on investigating terrorist financing is likely to amount to \$30.5 million, or nearly 98% of the total IRS budget for this purpose.¹¹⁷ Of the 186 IRS employees expected to work on a full-time basis on activities related to terrorist financing in FY2005, 182 come from CI.

The SB/SE Division performs a number of important tasks. One is to enforce compliance with certain sections of the tax code. Another is to monitor and enforce compliance by certain non-banking financial institutions with the reporting requirements of the BSA. In discharging this responsibility, SB/SE agents conduct examinations of MSBs, casinos, and credit unions to ensure they comply with reporting requirements under the BSA. They refer possible violations to CI and Treasury's Financial Crimes Enforcement Network for investigation. Some of the

¹¹⁶ The estimates were obtained through an e-mail exchange with Floyd Williams of the IRS Congressional Liaison Office on July 22, 2004.

¹¹⁷ Based on information contained in an e-mail message received from Floyd Williams of the IRS on April 8, 2005.

cases could involve suspected attempts to launder money to terrorist groups. In October 2004, a new office was established within the SB/SE Division — the Office of Fraud/BSA — to coordinate IRS's efforts to enforce compliance with the BSA. The director of the office reports directly to the Commissioner of SB/SE and is responsible for BSA policy formation and data management. It is not clear from available information how much the Division is likely to spend on activities tied to investigations of terrorist financing in FY2005.

A primary responsibility of the TE/GE Division is oversight of the financial affairs of charities. TE/GE civil examiners evaluate applications submitted by organizations seeking tax-exempt status and monitor the continuing eligibility of organizations already granted that status through information obtained from tax returns and other sources. The Division recently revised its application form for charities seeking tax-exempt status (Form 1023) to include more relevant information for criminal investigators in cases involving allegations of financial crimes or terrorist financing. Additionally, agents from the Exempt Organizations branch of the TE/GE Division lend assistance to CI and other federal agencies in their investigations of charities suspected of having diverted funds to support terrorist activities. In FY2004, the EO began an intensive educational program to persuade charities to implement effective internal controls to prevent the unintended diversion of assets to terrorist groups. And in FY2005, the Exempt Organizations branch plans to establish an office known as the Exempt Organization Fraud and Financial Transactions Unit, whose main tasks will include exposing and disrupting the diversion of charitable assets to fund terrorist activities and expanding the database on the flow of funds from donors to charitable organizations available to CI and other law enforcement agencies. Once again, it is not clear how much the Division will spend on activities related to investigations of terrorist financing in FY2005.

Underpinning the IRS's contribution to the federal government's fight against terrorist financing are the knowledge, skills and technology possessed by CI special agents and certain financial information the agency collects under a variety of tax and anti-money laundering statutes, including the BSA.

Criminal Investigations special agents must have academic degrees in accounting and business finance. In addition, they undergo rigorous training in criminal investigative techniques, forensic accounting, and the fundamentals of financial investigations. Some also receive specialized training in methods of tracking and thwarting terrorist financing from prosecutors with the Department of Justice's Counterterrorism Section. Experienced special agents tend to excel at unraveling complex financial transactions by acquiring and analyzing key pieces of detailed financial information and re-assembling them in the manner of a jigsaw puzzle to form what is intended to be a coherent picture of expenditures, life-style changes, and acquisition of assets. As of March 19, 2005, the IRS employs 2,733 special agents, 111 of whom serve as computer investigative specialists trained to use special equipment and techniques to preserve digital evidence and to recover financial data.¹¹⁸

¹¹⁸ Based on information obtained from Floyd Williams of the IRS in an e-mail message (continued...)

Around 182 special agents and CI support personnel are working on counter-terrorism investigations in FY2005.¹¹⁹ Some of these agents, along with a number of agents from the TE/GE Division, are involved in a pilot anti-terrorism initiative being conducted at the Garden City Counterterrorism Lead Development Center (LDC) in Garden City, NY. The initiative, which is directed by the CI, offers research and project support to anti-terrorist financing investigations being conducted by the Joint Terrorism Task Forces led by the FBI or by CI special agents.¹²⁰ By combining confidential data from tax forms with public sources of information and data gathered from other criminal investigations, the LDC can undertake thorough analyses of financial data relevant to specific investigations and disseminate the results in accordance with the limits imposed by tax disclosure laws and the rules governing the secrecy of grand jury proceedings. CI special agents assigned to the LDC have focused their investigations on the members of known terrorist groups who might have violated tax, money-laundering, and currency laws and individuals linked to tax-exempt organizations who might be raising funds to support terrorist groups.

Owing to its responsibility for enforcing tax laws and various money laundering statutes, the IRS has direct access to financial information that might be useful in detecting and tracking tax evasion and various financial crimes, including the movement of money earned through illegal activities through domestic financial institutions to foreign 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.¹²¹ 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 with the IRS; the form provides 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 financial institutions not regulated by other federal agencies; these institutions include MSBs, casinos, and non-federally insured credit unions. The IRS is also responsible for processing and storing electronically all BSA documents collected by all federal agencies (including FBARs, currency transactions reports, and

¹¹⁸ (...continued)
received on April 21, 2005.

¹¹⁹ See written testimony 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/hearings>], visited on May 9, 2005.

¹²⁰ See written testimony of Juan Carlos Zarate, Assistant Treasury Secretary for Terrorist Financing and Financial Crimes, submitted to the Subcommittee on Oversight and Investigations of the House Committee on Financial Services for a hearing held on Feb. 16, 2005. Available at [<http://www.financialservices.house.gov/hearings>], visited on April 1, 2005.

¹²¹ 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.

suspicious activity reports) in a computer data base known as the Currency Banking Retrieval System. Currently, the CBRs contains close to 144 million BSA documents. Sometime in 2006 or 2007, FinCEN is to assume primary responsibility for processing and storing all BSA documents through a project known as BSA Direct.¹²² Although all these documents are made available to other law enforcement and regulatory agencies, the IRS appears to be the largest user. According to congressional testimony by Nancy Jardini, Chief of the Criminal Investigations Division, data culled from BSA documents played important roles in 26% of the 150 investigations into terrorist financing conducted by special agents through June 2004.¹²³

Coordination and Cooperation with Other Treasury Bureaus and Federal Agencies

The IRS shares its investigative resources with a variety of other Treasury bureaus and federal agencies. It is forging close working relationships with the Treasury Department's Office of Terrorism and Financial Intelligence as well as Treasury's Office of Foreign Assets Control, FinCEN, and the Working Group on Terrorist Financing and Charities. A key function of TFI is to assemble and analyze intelligence on the methods used by terrorist groups to finance their activities. FinCEN and the IRS work closely on enforcing compliance with the BSA, and FinCEN refers possible cases of terrorist financing to IRS's LDC for further investigation.

In addition, the IRS is contributing to numerous inter-agency initiatives aimed in whole or in part at tracking and disrupting the flow of funds to terrorist groups. Among the noteworthy initiatives are the National Counterterrorism Center; the Informal Value Transfer System Working Group; 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, Terrorist Financing Operations Section, and National Joint Terrorism Task Force; 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 are the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Drug Enforcement Administration; and Immigration and Customs Enforcement.

Measures of Success in Campaign Against Terrorist Financing

There is no evidence that the IRS has developed a formal and publicly accessible method for evaluating the cost-effectiveness of its contributions to the

¹²² "FinCEN's BSA Direct Could Counteract Shady Transactions; U.S. Treasury's Financial Crimes Enforcement Network," *Electronic Payments Weekly*, Vol. 2, No. 2, Jan. 11, 2005.

¹²³ 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.

campaign against terrorist financing. The apparent lack of such a method makes it difficult to address some key policy issues raised by those contributions. Specifically, it is not clear to what extent the agency's involvement complements or duplicates work done by other agencies, yields financial information that results in the elimination or disruption of specific sources of terrorist financing, and can be regarded as a desirable investment of public resources. Nonetheless, the IRS does keep track of the number of anti-terrorist financing investigations its agents are involved in and their outcomes. According to 2004 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."¹²⁴ Of these, over 100 led to criminal indictments; another 120 were referred to the Justice Department for prosecution; and the remaining 150 or so were incomplete and still being worked on by CI special agents.

Impact of the Recommendations of the 9/11 Commission

By all available accounts, the IRS has made limited changes in its contributions to the federal government's campaign to combat terrorist financing in response to the 9/11 Commission's recommendation to improve the collection of intelligence regarding terrorist financing. On the whole, it appears that IRS's role in the government's campaign against terrorist financing is not only consistent with this recommended change in strategy but arguably critical to its prospects for success.

In September 2004, the IRS established a new senior executive position to coordinate its activities related to terrorist financing. The current Counterterrorism Coordinator is Rebecca Sparkman. Her duties include evaluating the efficacy of the agency's contributions to the fight against terrorist financing; monitoring criminal cases involving allegations of terrorist financing; overseeing the interactions between IRS and other Treasury bureaus and federal agencies involved in the fight against terrorism to make sure they are not hampered by a lack of coordination; and fostering open communication among the divisions in IRS contributing to the fight against terrorist financing. In addition, the IRS shifted its representative on the National Joint Terrorism Task Force to the National Counterterrorism Center established in August 2004 through an executive order signed by President Bush.

¹²⁴ 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.

Departments of Homeland Security and Justice

Bureau of Customs and Border Protection (CBP)¹²⁵

The Bureau of Customs and Border Protection 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 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 Fighting Terrorist Financing. CBP's role in the national effort to combat terrorist financing is confined to its inspection and interdiction activities along the border and 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 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. Interdiction and Security Outbound 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 United States).

Data regarding budget and resources devoted to terrorist financing specifically are not readily available. However, general data regarding CBP operations are

¹²⁵ This section was prepared by Jennifer Lake/Domestic Social Policy Division (DSP).

available. CBP has more than 40,000 employees. Of these, nearly 18,000 are front line inspectors. CBP's budget for FY2005 is \$6.5 billion and \$6.7 billion has been requested for FY2006.

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 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.

Measures of Success and Accomplishments. In FY2004 CBP Interdiction and Security (Outbound) operations made 1,320 seizures of unreported and bulk smuggling of currency valued at \$45.9 million. This same unit, in FY2003, also made a total of 1,337 seizures valued at \$51.7 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. CBP's Canine Enforcement Program was responsible for seizures of U.S. currency worth \$28.2 million in FY2004. According to recently reported statistics, CBP makes five 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.

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 Immigration and Customs Enforcement, Coast Guard, and the Transportation Security Administration (TSA). They also include 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 the Bureau of Immigration and Customs Enforcement, Coast Guard; the U.S. Department of Agriculture; the Transportation Security Administration; 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 (CIA); the joint venture Terrorist Threat Integration Center (TTIC); and the FBI-led Terrorist Screening Center (TSC).

Bureau of Immigration and Customs Enforcement (ICE)¹²⁶

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; the Federal Protective Service, and the

¹²⁶ This section was prepared by Jennifer Lake/DSP

Federal Air Marshals. 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 Fighting 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 investigative priorities and responsibilities, the Secretary of Homeland Security and the Attorney General signed a Memorandum of Agreement (MOA) 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, is able to play a significant role. The MOA provided that ICE and the FBI detail appropriate personnel to the other agency. 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 Financial Investigations Division.¹²⁷ 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 to be referred to the FBI's TFOS, where the FBI and FBI-led Joint Terrorism Task Forces are to 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 and reorganized it into two primary programs: the Financial Investigations Program 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

¹²⁷ See, Government Accountability Office, *Combating Terrorism: Federal Agencies Face Continuing Challenges in Addressing Terrorist Financing and Money Laundering*, GAO-04-501T, (Washington: Mar. 4, 2004);

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.

In addition, ICE has 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 Budapest, Hungary. 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's 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. This program provides training for law enforcement officers from five South American countries.

Capabilities and Resources. According to the 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. FID received \$283 million in FY2004.¹²⁸ According to the GAO, 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

¹²⁸ Department of Homeland Security. *FY2005 Congressional Budget Justification*, "Immigration and Customs Enforcement" ICE-37. FY2005 enacted and FY2006 request data for FID were not available for inclusion in this update.

Customs Service agents, and 25 Federal Protective Service agents.¹²⁹ ICE's Office of Investigations (of which FID is a component) received a budget of \$1.1 billion in FY2005 and has requested \$1.3 billion for FY2006.¹³⁰

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. Recent information published by ICE indicates that through Cornerstone, ICE has seized nearly \$300 million in currency and monetary instruments, and made 1,800 arrests for financial crimes.¹³¹

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 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 Service¹³²

The United States Secret Service — now a part of the Department of Homeland Security, where it is to be “maintained as a distinct entity”¹³³ — had been housed, since its inception as a small anti-counterfeiting force in 1865, in the Department of the Treasury.¹³⁴ 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.¹³⁵ These can be direct, through participation in relevant interagency task

¹²⁹ 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.

¹³⁰ Department of Homeland Security. *FY2006 Congressional Budget Justification*, “Immigration and Customs Enforcement” ICE-S&E-15.

¹³¹ Testimony of Assistant Secretary Michael J. Garcia, U.S. Immigration and Customs Enforcement, before the Senate Banking, Housing and Urban Affairs Committee, September 29, 2004.

¹³² This section was prepared by Fred Kaiser/G&F

¹³³ This autonomy was granted in the legislation establishing DHS (P.L. 107-296, Sec. 821 (2002)).

¹³⁴ 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.

¹³⁵ Descriptions and overviews are in: U.S. Secret Service, *Strategic Plan, 2003-2008* (continued...)

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.)

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.¹³⁶ 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.¹³⁷

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

¹³⁵ (...continued)

(2005), *Budget Request, FY2006* (2005), and *Mission Statement* (2003), available at [<http://www.secretservice.gov>]. Congressional committee 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* (2005), 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 a multiplicity of reports and testimony from the U.S. Government Accountability Office, formerly the 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).

¹³⁶ Secret Service, *Strategic Plan, 2003-2008*.

¹³⁷ Secret Service, *Mission Statement*.

financial institution fraud, money laundering, forgery, and access device fraud.¹³⁸ 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.¹³⁹

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.¹⁴⁰

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 from the high degree of secrecy and sensitivity surrounding them and agency operations. In addition, 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 and procedures 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

¹³⁸ Ibid., Financial Crimes Division statement, available at [http://www.secretservice.gov/financial_crimes.shtml].

¹³⁹ Ibid.

¹⁴⁰ Ibid.

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)¹⁴¹

The Federal Bureau of Investigation is the lead agency in the Department of Justice (DOJ) for 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, 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."¹⁴² 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 has primary jurisdiction over the bulk of specified criminal offenses associated with money laundering in statute.¹⁴³ 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

¹⁴¹ This section was prepared by Todd Masse/DSP

¹⁴² See Testimony of Gary M. Bald, Acting Assistant Director for Counterterrorism Division, FBI, Before the Senate Caucus on International Narcotics Control, March 4, 2004.

¹⁴³ 18. U.S.C. § 1956(c)(7).

investigative techniques developed by the FCS were used to trace the movements and commercial transactions of the 9/11 hijackers.¹⁴⁴

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 and other criminal intelligence to generate new investigations and contribute to ongoing investigations.¹⁴⁵

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,¹⁴⁶ 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.¹⁴⁷ The FBI was also the lead agency for Title 18 U.S.C. money laundering referrals (376),¹⁴⁸ but such cases do not include those involving material support to foreign terrorists and international financial transaction offenses.¹⁴⁹

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 back to 1994 with the enactment of the first “material support” legislation.¹⁵⁰ The material support laws were subsequently enhanced with the enactment of the USA PATRIOT Act.¹⁵¹ A variety of other legal tools are also used in the investigation and prosecution of terrorist financing activity.¹⁵²

¹⁴⁴ 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.

¹⁴⁵ Federal Bureau of Investigation, “About the Money Laundering Unit” web page, go to [http://www.fbi.gov/hq/cid/fc/ml/m._about.htm].

¹⁴⁶ Such cases involved charges under 18 U.S.C. §§ 1956, 1957, and 1960; and 31 U.S.C. §§ 5313, 5316, and 5324.

¹⁴⁷ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Money Laundering Offenders, 1994-2001*, by Mark Motivans, Ph.D., July 2003, p. 5.

¹⁴⁸ Such cases involved charges under 18 U.S.C. §§ 1956, 1957, and 1960.

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

¹⁵⁰ 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.”

¹⁵¹ See P.L. 107-56, particularly Title III, “International Money Laundering Abatement and Anti-Terrorism Financing Act of 2001.” Among other initiatives, the act provides for stricter rules on correspondent bank accounts, requires securities brokers and dealers to file suspicious activity reports, and certain money services groups to register with the U.S. Department of the Treasury’s Financial Crimes Enforcement Network and file SARs.

¹⁵² Some of these laws include 18 U.S.C., Section 956 concerning conspiracies within the (continued...)

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.”¹⁵³ It was not until April 2002, that the various elements of the FBI tracking terrorist financing were integrated under the Terrorist Financing Operations Section 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 analysis to facilitate the identification of previously unknown terrorist suspects.¹⁵⁴

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 these are 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

¹⁵² (...continued)

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.

¹⁵³ 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.

¹⁵⁴ 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.

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.)."¹⁵⁵ 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.¹⁵⁶

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/Debit Card Sector, Money Services Businesses, Securities/Brokerages Sector, Insurance, Travel, Internet Service Providers, and the Telecommunications Industry."¹⁵⁷ 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.¹⁵⁸ 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.

¹⁵⁵ 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.

¹⁵⁶ Ibid.

¹⁵⁷ See Testimony of John Pistole, September 25, 2003.

¹⁵⁸ Ibid.

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.¹⁵⁹

According to the FBI, in order to address some of the concerns raised by the GAO with respect to alternative financing mechanisms, it has developed intelligence requirements related to known indicators of terrorist financing activity.¹⁶⁰ Theoretically, such requirements should cause the FBI’s field collectors (largely its special agents located at the 56 FBI field offices¹⁶¹) to pro-actively 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.”¹⁶²

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

¹⁵⁹ See Testimony of Gary M. Bald, March 4, 2004.

¹⁶⁰ 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.

¹⁶¹ 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).

¹⁶² See Testimony of John Pistole, March 4, 2004.

activities related primarily to terrorist financing. The interagency FBI-led Joint Terrorism Task Forces, of which there are currently 100, play the lead role in investigating terrorist financing activities. In addition to representatives from other federal law enforcement agencies, the JTTFs also include participation of many state and local law enforcement officers. Domestically, the FBI 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 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.

In May of 2003, a Memorandum of Agreement was signed 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 51 Legal Attache Offices which conduct law enforcement and intelligence liaison,¹⁶³ 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.¹⁶⁴ Moreover, the FBI is a participant in the Joint Terrorist 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 TFOS,

¹⁶³ These 51 Legal Attache offices cover over 200 countries. For FY2006, the President's budget requests an additional 60 positions and \$11M to expand the Legal Attache program. According to FBI Director Robert S. Mueller, III, by the end of 2005, the FBI hopes to have Legal Attaches in Kabul, Afghanistan; Sofia, Bulgaria; and Sarajevo, Bosnia. See Statement of Robert S. Mueller, III, Director Federal Bureau of Investigation, Before the Committee on Appropriations, Subcommittee on Science, State, Justice, and Commerce, and Related Agencies, March 8, 2005.

¹⁶⁴ See Testimony of Gary M. Bald, March 4, 2004.

and subsequently to the FBI-led JTTFs in the United States for investigation, as appropriate.¹⁶⁵

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)¹⁶⁶

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 Department of Justice'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.

Teams of ATF auditors, special agents and inspectors are all involved with performing complex investigations of multi-state criminal violations of federal law. Several ATF investigations have found terrorism links. For example, in 2003, 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.

¹⁶⁵ See Testimony of Juan C. Zarate, March 24, 2004.

¹⁶⁶ This section was prepared by Cindy Hill/DSP

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), Financial Crimes Enforcement Network, 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 represent thousands of state and local law enforcement agencies.

Drug Enforcement Administration (DEA)¹⁶⁷

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.¹⁶⁸

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.

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:

¹⁶⁷ This section was prepared by Mark Eddy/DSP

¹⁶⁸ 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.

- The Office of Financial Operations at DEA headquarters has overall program responsibility for all DEA financial investigative efforts;
- The Financial Intelligence/Investigations Unit at DEA headquarters provides analytical support to the Office of Investigative 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. For FY2005, DEA again anticipates reimbursement from the FBI for the counterterrorism support provided by DEA. The anticipated reimbursement would equal \$6.3 million, which includes funding to support 45 positions (including 11 Special Agents and 13 Intelligence Analysts).

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.¹⁶⁹

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 Country Office investigations that identify extremist/terrorist information are documented in a teletype and/or ROI and immediately passed to the respective U.S.

¹⁶⁹ Information on both investigations can be found on the DEA Website [<http://www.usdoj.gov/dea/>].

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 State¹⁷⁰

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 co-chair the Terrorist Finance Working Group (TFWG) which is made up of numerous agencies throughout the U.S. government.¹⁷¹

Funding for counterterrorism activities within the Department of State is designated for the Office of the Ambassador-at-large for Counterterrorism (\$1.728 million for FY2004, an estimated \$1.614 million for FY2005, and \$1.614 million requested for FY2006). In addition, there is funding for worldwide security upgrades for the Office of the Ambassador-at-large for Counterterrorism (FY2004 — \$2.968 million, none for 2005, and none requested for FY2006). Furthermore, funding for salaries and expenses for the Office of the Coordinator for Counterterrorism’s management operations amounts to \$5.318 million for FY2004, an estimated \$5.574 million for FY2005, and a request of \$5.716 million for FY2006. The State Department budget does not break down funding levels to specific activities such as the freezing of assets.

¹⁷⁰ This section was prepared by Susan Epstein/FDT.

¹⁷¹ 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.

According to the Department of State's *Performance and Accountability Report Fiscal Year 2004*, November 15, 2004, the agency's counterterrorism activities were on target in both FY2003 and FY2004. One rating — *the number of countries that have instituted measures to combat the financing of terrorists through U.S. training and assistance programs* — ranked above target. The report states that as of November 2004, "the Department mobilized some 180 countries and territories in the global war on terrorism to identify, disrupt, and destroy international terrorist organizations. Over 3,000 terrorist suspects have been arrested, and over \$138 million in terrorists assets have been blocked by over forty foreign governments."

International Cooperation¹⁷²

In response to concerns expressed by the 9/11 Commission that the U.S. government "has been less successful in persuading other countries to adopt financial regulations that would permit the tracing of financial transactions,"¹⁷³ some observers have recommended the establishment of a counter-terrorist financing certification regime as a means of securing greater cooperation and compliance with international counter-terrorist financing standards. In Congress, legislative proposals to enact such a regime are currently under consideration. H.R.1952 would establish a certification regime modeled on the existing illicit drug certification process that would require the Department of the Treasury to identify countries of concern based on non-compliance with the requirements of the International Convention for the Suppression of the Financing of Terrorism. The bill would require the withholding of 50% of Foreign Assistance Act assistance and direct opposition voting by U.S. representatives to multilateral financial institutions with regard to countries of concern. The bill provides for a Presidential national security interest waiver subject to Congressional review. H.R.1952 has been read and referred to the House Committee on International Relations and the House Committee on Financial Services.

International Agreements and Bodies

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. An 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.¹⁷⁴ In order to

¹⁷² This section was prepared by Martin A. Weiss/FDT and Christopher Blanchard/FDT

¹⁷³ Final Report of the National Commission on Terrorist Attacks Upon the United States, p. 382.

¹⁷⁴ Ian Roberge, "The Internationalization of Public Policy and the Fight Against Terrorist Financing," Paper presented at the International Studies Association Conference, Montreal, (continued...)

facilitate cooperation on anti-money laundering issues among various nations and to help countries implement the Vienna Convention, the Group of Seven nations created the Financial Action Task Force (FATF) in 1989.

Several recent conventions on terrorist financing have been negotiated. Most prominent among these is the UN's International Convention for the Suppression of the Financing of Terrorism, which entered into force on April 10, 2002. As of June 2005, 132 countries had signed the convention and 117 were full parties to the agreement.¹⁷⁵ 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 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

¹⁷⁴ (...continued)
Canada, 2004, pg.12.

¹⁷⁵ [http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty11.asp]

financing (*Eight Special Recommendations on Terrorist Financing*).¹⁷⁶ It is housed at the Organization for Economic Cooperation and Development (OECD) in Paris. As of July 2005, FATF has 33 members.¹⁷⁷ 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.¹⁷⁸

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.
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.¹⁷⁹

In October 2004, FATF added a ninth recommendation calling on countries to stop cross-border movements of currency and monetary instruments related to terrorist financing and money laundering and confiscate such funds. It also called for enhanced information-sharing between countries on the movement of illicit cash related to terrorist financing or money laundering.

¹⁷⁶ See CRS Report RS21904: *The Financial Action Task Force: An Overview*.

¹⁷⁷ See FATF website for a list of member countries and observer organizations [<http://www1.oecd.org/fatf/>]

¹⁷⁸ *FATF Mandate Renewed for Eight Years*, May 14, 2004, available at [http://www1.oecd.org/fatf/pdf/PR-20040514_en.pdf]

¹⁷⁹ *Financial Action Task Force Terrorist Financing*, available at [http://www1.oecd.org/fatf/TerFinance_en.htm]

Middle East and North Africa Financial Action Task Force. The Middle East and North Africa Financial Action Task Force (MENAFATF) was inaugurated in November 2004 and works to promote the adoption and implementation of internationally recognized anti-money laundering and counter-terrorism financing standards among its 14 Middle Eastern member states.¹⁸⁰ The new body is designed to provide a regional forum for sharing knowledge and expertise on terrorist financing issues and to serve as a mutual assessment and assistance mechanism for countries working to develop legal and enforcement infrastructure to combat terrorist financing. The regional body is headquartered in Bahrain, and its President, Vice President, and Executive Secretary are from Lebanon, Egypt, and Saudi Arabia, respectively.¹⁸¹ At the MENAFATF's first plenary meeting in April 2005, representatives assessed and evaluated progress in combating terrorist financing in the region and discussed the organization's budget, action plan, and working groups. Its next meeting is scheduled for late-September 2005 in Beirut.

The International Monetary Fund (IMF) and the World Bank have also incorporated counter-terrorist financing activities into their work. 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. In March 2004, the IMF and World Bank agreed to make the pilot program permanent. Experience under the pilot program with both assessments and with technical assistance considerably deepened collaboration between the IMF and World Bank and FATF and the FATF Style Regional Bodies (FSRBs). Recommendations for the IMF and World Bank on how to improve monitoring include the need for close coordination with FATF and FATF-Style Regional Bodies 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.¹⁸²

In addition to the pilot program, 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.¹⁸³ None of these reports constitutes a binding agreement. The legal basis for the IMF and World Banks' work on these issues is through its technical assistance function. The IMF and World Bank may offer advice and

¹⁸⁰ The MENAFATF participants are Syria, Bahrain, Saudi Arabia, the United Arab Emirates, Lebanon, Qatar, Algeria, Oman, Morocco, Jordan, Egypt, Kuwait, Tunisia, and Yemen.

¹⁸¹ For more information, see [<http://www.mofne.gov.bh/menafatf/Home.asp>].

¹⁸² 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.

¹⁸³ 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.

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.

Conclusion: Policy Issues for Congress¹⁸⁴

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 challenges to law enforcement.

These challenges 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 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? In the wake of the 9/11 report, this does not appear to be answered. More importantly, who should author the U.S. Government terrorist financing strategy? Although the current terrorist financing strategy is drawn up by the State Department, many would argue that Treasury maintains more expertise on the issue and, having prepared the previous Anti-Money Laundering Strategies, would be better suited to draft a national counterterrorist financing strategy.
- 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? The preceding analysis points to many possible overlaps among the various investigatory agencies (FBI/DOJ and DHS) as well as between Treasury and State in policy setting and providing technical assistance to foreign allies. To what extent has the Administration analyzed each federal agency budget allocation for combating terrorist financing to reconcile duplication of efforts?
- 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?

¹⁸⁴ This section was prepared by Martin A. Weiss/FDT.

- 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. Several other Committees have potential relevance in the overall fight against terrorist financing. 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 United States. 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.
- 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, 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.

Key Acronyms

AML - Anti-Money Laundering
 APHIS - Animal and Plant Health Inspection Service
 ATF - Bureau of Alcohol, Tobacco, Firearms, and Explosives
 BSA - Bank Secrecy Act
 CBP - Bureau of Customs and Border Protection
 CBRS - Currency Banking Retrieval System
 CFTC - Commodity Futures Trading Commission
 CFTRA - Currency and Foreign Transaction Reporting Act
 CI - Criminal Investigation
 CIDAD - The Organization of American State's Inter-American Drug Abuse Control Commission
 CTR - Currency Transaction Report
 DCI - Director of Central Intelligence
 DEA - Drug Enforcement Agency
 DHS - Department of Homeland Security
 DNI - Director of National Intelligence
 DSRO - Designated Self-Regulatory Organizations
 EB - Bureau for Economic and Business Affairs
 FATF - Financial Action Task Force
 FBAR - Report of Foreign Bank and Financial Accounts
 FBI - Federal Bureau of Investigation
 FCS - Financial Crimes Section
 FDIC - Federal Deposit Insurance Corporation
 Fed - Federal Reserve System
 FFIEC - Federal Financial Institutions Examination Council
 FID - Financial Investigations Division
 FinCEN - Financial Crimes Enforcement Network
 FIP - Financial Investigative Program
 FSRBs - FATF Style Regional Bodies
 FTATC - Foreign Terrorist Asset Tracking Center
 FTATG - Foreign Terrorist Asset Targeting Group
 HIFCA - High-risk money laundering and related financial crimes areas
 IC - Intelligence Community
 ICE - Bureau of Immigration and Customs Enforcement
 IG - Inspector General
 IMF - International Monetary Fund
 INS - Immigration and Naturalization Service
 IEEPA - International Emergency Economic Powers Act
 IRS - Internal Revenue Service
 IRTPA - Intelligence Reform and Terrorism Prevention Act of 2004
 ITFWG - International Terrorism Financing Working Group
 JTTF - Joint Terrorism Task Forces
 LDC - Garden City (Garden City, NY) Counterterrorism Lead Development Center
 MENAFATF - Middle East and North Africa Financial Action Task Force
 MLCC - Money Laundering Coordination Center
 MOA - Memorandum of Understanding
 MSB - Money Service Business
 NAMLG - National Anti-Money Laundering Group

NCTC - National Counterterrorism Center
NFA - National Futures Association
NSC - National Security Council
OCC - Office of the Comptroller of the Currency
OECD - Organization for Economic Cooperation and Development
OFAC - Office of Foreign Assets Control
OTS - Office of Thrift Supervision
PCC - Policy Coordinating Committee
SARs - suspicious activity reports
SB/SE - Small Business and Self-Employed Taxpayers Division
S/CT - Office of the Coordinator for Counterterrorism
SEC - Securities and Exchange Commission
SSCI - Senate Select Committee on Intelligence
TE/GE - Tax-Exempt and Government Entities Division
TFI - Office of Terrorism and Financial Intelligence
TFOS - Terrorist Financing Operation Section
TFWG - Terrorist Finance Working Group
TSA - Transportation Security Administration
UNSCR - United Nations Security Council Resolution