



GAO

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

February 20, 2004

The Honorable Thad Cochran
Chairman
The Honorable Robert C. Byrd
Ranking Minority Member
Subcommittee on Homeland Security
Committee on Appropriations
United States Senate

Subject: *Investigations of Terrorist Financing, Money Laundering, and Other Financial Crimes*

After the tragic events of September 11, 2001, federal efforts to wage a seamless, coordinated campaign against sources of terrorist financing became critically important. In May 2003, the Attorney General and the Secretary of Homeland Security signed a Memorandum of Agreement (Agreement) concerning terrorist financing investigations, which contained a number of provisions designed to resolve jurisdictional issues and enhance interagency coordination. The Agreement and its related procedures specified that the Federal Bureau of Investigation (FBI) was to have the lead role in investigating terrorist financing and that the U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security, was to pursue terrorist financing solely through participation in FBI-led task forces, except as expressly approved by the FBI. Specific provisions of the Agreement directed the FBI and ICE to, among other things, develop collaborative procedures for handling applicable ICE investigations or financial crimes leads that have a nexus to terrorism. Another provision required that the FBI and ICE jointly report to the Attorney General, the Secretary of Homeland Security, and the Assistant to the President for Homeland Security on the status of the implementation of the Agreement 4 months from its effective date.

Shortly after the Memorandum of Agreement was signed, Department of Homeland Security component agencies, the U.S. Secret Service and ICE, expressed concern that the Agreement could adversely affect their ability to conduct investigations involving financial crimes. Thus, Senate Report 108-86 (July 2003)¹ directed that we evaluate the Agreement's impact on the existing authorities of the Secret Service and ICE to effectively carry out traditional financial crimes investigations. Our initial work showed that the Agreement pertains only to investigations and operations of

¹ Title I of the Senate Appropriations Committee report on the Department of Homeland Security Appropriations Bill for 2004.

the FBI and ICE and does not impact the investigative authority or operations of the Secret Service. Therefore, we are not discussing the Secret Service in this report. In accordance with the congressional mandate and as agreed with your offices, this report addresses the following questions:

- What is the status of the implementation of the Memorandum of Agreement?
- How has the Agreement affected the mission or role of ICE regarding investigations of financial crimes?
- What are the potential challenges to the successful implementation of the Agreement?

To address these questions, our work focused on the principal components of the Department of Homeland Security and the Department of Justice that are responsible for implementing the Agreement and investigating and prosecuting terrorist financing—ICE, the FBI and its Joint Terrorism Task Forces, the Terrorist Financing Unit of the Counterterrorism Section in Justice’s Criminal Division, and U.S. Attorneys Offices. To determine the implementation status of the Agreement and the potential challenges to its successful implementation, we contacted headquarters officials from these components, and we reviewed available documentation of intra-agency and interagency communications on these topics. We obtained additional perspectives on the Agreement and its implementation from field officials in three major U.S. cities and reviewed related documents.

Further, to determine how the Agreement has affected the mission or role of ICE, we interviewed ICE headquarters and field officials and reviewed applicable laws and other documents. We also contacted the Department of the Treasury’s Financial Crimes Enforcement Network, officials from three financial regulatory agencies (Federal Reserve Board, Office of the Comptroller of the Currency, and the Securities and Exchange Commission), two large U.S. banks, and one banking industry association.² The results of our interviews with federal law enforcement officials in the field offices and with the financial community officials may not be representative of the views and opinions of others nationwide. We performed our work from October 2003 to February 2004 in accordance with generally accepted government auditing standards. Enclosure I presents more details about our objectives, scope, and methodology.

Results in Brief

As of February 2004, the FBI and ICE had implemented or taken concrete steps to implement most of the key Memorandum of Agreement provisions. For example, the agencies had developed collaborative procedures to determine whether applicable

² A primary role of the Financial Crimes Enforcement Network is to support terrorist financing investigations through the facilitation of information sharing and networking among the law enforcement, regulatory, and financial communities. This role includes collecting and disseminating financial leads to law enforcement agencies.

ICE investigations or financial crimes leads may be related to terrorism or terrorist financing—and, if so, determine whether these investigations or leads should thereafter be pursued under the auspices of the FBI. The FBI and ICE have not yet issued a joint report on the status of the implementation, which was required 4 months from the effective date of the Agreement. By granting the FBI the lead role in investigating terrorist financing, the Agreement has altered ICE's role in investigating terrorism-related financial crimes. However, the Agreement generally has not affected the agency's mission or role in investigating other financial crimes. The FBI and ICE have and will continue to confront a number of operational and organizational challenges, such as establishing and maintaining effective interagency relationships and ensuring that the financial crimes expertise and other investigative competencies of both agencies are appropriately and effectively utilized. Continued progress in implementing the Agreement depends largely on the FBI's and ICE's ability to find workable strategies to overcome these challenges.

Background

The former U.S. Customs Service, which is now part of ICE, and the FBI both have a long history of investigating money laundering and other financial crimes.³ In response to the terrorist attacks of September 11, 2001, the Departments of the Treasury and Justice both established multi-agency task forces dedicated to combating terrorist financing. Treasury established Operation Green Quest, led by Customs, to augment existing counterterrorist efforts by targeting current terrorist funding sources and identifying possible future sources. In addition to targeting individuals and organizations, Operation Green Quest was designed to attack the financial systems that may be used by terrorists to raise and move funds, such as fraudulent charities and the shipment of bulk currency. In January 2003, Customs expanded Operation Green Quest by doubling the personnel commitment to a total of approximately 300 agents and analysts nationwide to work solely on terrorist financing matters. In March 2003, Customs and Operation Green Quest were transferred to ICE, within the Department of Homeland Security.

On September 13, 2001, the FBI formed a multi-agency task force—which is now known as the Terrorist Financing Operations Section (TFOS)—to combat terrorist financing. The mission of TFOS has evolved into a broad role to identify, investigate, prosecute, disrupt, and dismantle all terrorist-related financial and fundraising activities. The FBI also took action to expand the antiterrorist financing focus of its Joint Terrorism Task Forces (JTTFs)—teams of local and state law enforcement officials, FBI agents, and other federal agents and personnel whose mission is to investigate and prevent acts of terrorism.⁴ In 2002, the FBI created a national JTTF in

³ Money laundering is the process used to transform monetary proceeds derived from criminal activities into funds and assets that appear to have come from legitimate sources.

⁴ According to the FBI, the first JTTF came into being in 1980, and the total number of task forces has nearly doubled since September 11, 2001. Today, there is a JTTF in each of the FBI's 56 main field offices, and additional task forces are located in smaller FBI offices.

Washington, D.C., to collect terrorism information and intelligence and funnel it to the field JTTFs, various terrorism units within the FBI, and partner agencies.

Following September 11, representatives of the FBI and Operation Green Quest met on several occasions to attempt to delineate antiterrorist financing roles and responsibilities. However, such efforts were largely unsuccessful. The resulting lack of clearly defined roles and coordination procedures contributed to duplication of efforts and disagreements over which agency should lead investigations.⁵ To help resolve these long-standing jurisdictional issues, in May 2003, the Attorney General and the Secretary of Homeland Security signed a Memorandum of Agreement on terrorist financing investigations. According to the Agreement, the Department of Justice will lead federal law enforcement efforts against terrorist financing.⁶ The Agreement specifies that the FBI is to lead terrorist financing investigations and operations, utilizing the intergovernmental and intra-agency national JTTF at FBI headquarters and the JTTFs in the field. The Agreement also specifies that, through TFOS, the FBI is to provide overall operational command to the national JTTF and the field JTTFs.

The Agreement contains several provisions designed to increase information sharing and coordination of terrorist financing investigations. For example, the Agreement requires the FBI and ICE to (1) detail appropriate personnel to each other's agency and (2) develop specific collaborative procedures to determine whether applicable ICE investigations or financial crimes leads may be related to terrorism or terrorist financing. Also, the Agreement required the FBI and ICE to produce a joint written report on the status of the implementation of the Agreement 4 months from its effective date. Additional details on the Agreement and all of its provisions are presented in enclosure II.

Most Key Memorandum of Agreement Provisions Have Been Implemented

As of February 2004, most of the key Memorandum of Agreement provisions had been implemented or were in the process of being implemented (see table 1). For example, in accordance with the Agreement, the FBI and ICE have cross-detailed key management personnel at the headquarters level, with an ICE manager serving as Deputy Section Chief of TFOS and an FBI manager detailed to ICE's financial crimes division. Also, the FBI and ICE have developed collaborative procedures to determine whether appropriate ICE money laundering investigations or financial crime leads may be related to terrorism or terrorist financing.

⁵ See U.S. General Accounting Office, *Combating Money Laundering: Opportunities Exist to Improve the National Strategy*, GAO-03-813 (Washington, D.C.: Sept. 26, 2003).

⁶ According to Justice, the main terrorist financing criminal statute is 18 U.S.C. § 2339B, which gives the Attorney General the responsibility for investigating the crime of terrorist financing.

Table 1: Status of Implementation of Key Memorandum of Agreement Provisions (as of Feb. 2004)

Agreement provisions	Implementation status
<p>Increase information sharing and coordination (para. 3).</p> <ul style="list-style-type: none"> • Take all reasonable and necessary steps to permit the maximum allowable information sharing relating to terrorist financing information and intelligence among the members of the national JTTF and field JTTFs. • Detail appropriate FBI personnel to the financial crimes division of ICE. Such detailees are to be provided full and timely access to all data developed in ICE's money laundering and financial crimes cases on an ongoing basis. 	<ul style="list-style-type: none"> • According to FBI and ICE officials, the implementation of this provision is ongoing. For example, the agencies are taking steps to ensure that ICE agents assigned to field JTTFs have required security clearances. • In February 2004, the FBI detailed a manager to ICE's financial crimes division. Earlier, other FBI staff had been detailed to ICE.
<p>Develop collaborative procedures to implement the Agreement (para. 4).</p> <ul style="list-style-type: none"> • By June 30, 2003, develop collaborative procedures to determine whether an ICE money laundering or financial crime lead or investigation is related to terrorism or terrorist financing and to ensure effective deconfliction. 	<ul style="list-style-type: none"> • The FBI and ICE finalized the collaborative procedures in July 2003. (See enc. II.)
<p>Detail a Homeland Security employee to be Deputy Section Chief of TFOS (para. 5).</p> <ul style="list-style-type: none"> • When the position of Deputy Section Chief of TFOS next becomes vacant or by December 1, 2003—whichever comes first—the position shall be filled by a Homeland Security employee detailed to the FBI. 	<ul style="list-style-type: none"> • In July 2003, the position of Deputy Section Chief of TFOS was filled by a Homeland Security employee. ICE has maintained staffing at TFOS (or predecessor groups) since October 2001.
<p>Detail ICE personnel to the national JTTF and JTTFs (para. 6).</p> <ul style="list-style-type: none"> • To utilize the expertise and capabilities of ICE in the federal campaign against terrorist financing, Homeland Security will detail a significant number of appropriate personnel to the national JTTF and field JTTFs, and the FBI will ensure that the detailees are fully integrated into its efforts to combat terrorist financing. 	<ul style="list-style-type: none"> • In February 2004, ICE officials said that 3 ICE agents had been assigned to the national JTTF and a total of 277 ICE agents had been assigned to field JTTFs.^a The officials did not know how many of these assignments were made after the Agreement was signed.
<p>Report on the implementation status of the Agreement (para. 8).</p> <ul style="list-style-type: none"> • The FBI and ICE shall provide a joint written report to the Attorney General, the Secretary of Homeland Security, and the Assistant to the President for Homeland Security on the status of the implementation of the Agreement 4 months from the effective date of the Agreement. 	<ul style="list-style-type: none"> • No report had been issued, as of February 20, 2004.

Source: GAO analysis of the Agreement and the collaborative procedures (see enc. II) and discussions with FBI and ICE officials.

^aAccording to ICE officials, the total for the field JTTFs does not include ICE agents who will be assigned in consonance with vetted cases being transitioned to the JTTFs, nor does it include ICE investigators who participate part time on JTTFs. Also, the officials said that 32 of the 277 ICE agents assigned to field JTTFs were former Customs Service agents. The ICE officials did not know how many of the 32 Customs agents had worked under the former Operation Green Quest.

Further, as an integral aspect of the collaborative procedures, ICE created a joint vetting unit, in which ICE and FBI personnel—who have full access to ICE and FBI databases—are to conduct reviews to determine whether a potential nexus to terrorism or terrorist financing exists in applicable ICE investigations or financial crimes leads. If so, the matter is to be referred to TFOS, where the FBI Section Chief is to provide the ICE Deputy Section Chief with information demonstrating the terrorism nexus, as well as the stage and development of the corresponding FBI investigation. Then, the Section Chief and the ICE Deputy Section Chief are to discuss the elements of the terrorism nexus, ICE's equity or commitment of resources to-date in the investigation, violations being pursued by ICE before the Memorandum of Agreement, and the direction of the investigation. After this collaborative consultation, the FBI and ICE are to decide (1) whether the ICE investigation will be conducted under the auspices of the JTTF and (2) agency roles in pursuing related investigations. Specific investigative strategies generally are to be developed at the field level by FBI, ICE, and U.S. Attorneys Office personnel. The Terrorist Financing Unit of the Counterterrorism Section in Justice's Criminal Division is involved in coordinating and prosecuting matters and cases involving terrorist financing, which are investigated by both the FBI and ICE.

From July to October 2003, the FBI provided a list of individuals, businesses, and organizations to the vetting unit that it believed were related to pre-Agreement ICE Operation Green Quest investigations. A review of the list by the vetting unit and TFOS identified approximately 30 potential crossover subjects. The FBI believed that these subjects had ties to terrorism or terrorist financing—and, accordingly, per the Agreement's collaborative procedures—any related ICE investigations should be transitioned to JTTFs. According to ICE officials, in late-October, TFOS demonstrated that 10 of the approximately 30 subjects had a confirmed nexus to terrorism or terrorist financing, and ICE agreed to transition the related ICE investigations to JTTFs. Regarding the other subjects, as of February 2004, FBI and ICE officials were engaged in discussions to determine appropriate courses of action.

Moreover, ICE has provided the vetting unit two sets of financial crimes leads to determine whether they may be related to terrorism or terrorist financing. Specifically, in September 2003, ICE provided the vetting unit a computer disk containing more than 7,000 subjects records that were related to all open former Operation Green Quest leads in ICE's financial investigations database. As of February 2004, TFOS was in the process of running the approximately 7,000 ICE subject records through FBI databases to determine whether the FBI had ongoing investigations involving the same subjects. Since the Agreement was signed, ICE has provided an additional 11 financial crimes leads to the vetting unit. TFOS has determined that none of these 11 leads had a significant connection to an FBI terrorism investigation and, therefore, would not be governed by the Agreement and ICE could continue to pursue them. More details about the results of the vetting process are presented in enclosure III.

Another Agreement provision—requiring ICE to detail a significant number of appropriate personnel to the national JTTF and the JTTFs in the field—is being handled on a location-specific, case-by-case basis. In response to our inquiries, FBI

and ICE officials said that this provision was not intended to refer to a specific number of personnel and certainly was not intended to imply that all former Operation Green Quest agents were to be detailed to JTTFs. According to ICE officials, as of February 2004, a total of 277 ICE personnel (from various legacy agencies) were assigned full time to JTTFs—a total that consisted of 161 former Immigration and Naturalization Service agents, 59 Federal Air Marshals, 32 former Customs Service agents, and 25 Federal Protective Service agents. ICE officials said that this total does not include ICE agents who will be assigned to JTTFs in consonance with vetted cases being transitioned to the JTTFs, nor does it include ICE investigators who participate part time on JTTFs.

Further, in response to our inquiries, ICE officials said they could not readily determine how many of the 277 ICE personnel (including the 32 former Customs Service agents) were assigned to JTTFs after the Agreement became effective or how many of these personnel were now working on financial aspects of terrorism investigations. The officials also said they could not readily determine how many of the 32 former Customs Service agents had financial investigations expertise or had worked in the former Operation Green Quest.⁷ The officials noted that all former Customs Service agents assigned to the JTTFs had received financial investigations training.

Finally, as shown in table 1, the FBI and ICE have not yet produced the required joint report on the status of the implementation of the Memorandum of Agreement. ICE officials said they provided a draft report to the FBI in January 2004. FBI officials said they anticipate that a joint report will be finalized by the end of February 2004.

The Memorandum of Agreement Generally Has Not Affected ICE's Mission or Role in Investigating Nonterrorism-Related Financial Crimes

By granting the FBI the lead role in investigating terrorist financing, the Agreement has altered ICE's role in investigating terrorism-related financial crimes. However, the Agreement generally has not affected the agency's mission or role in investigating other financial crimes. Specifically, the Agreement did not affect ICE's statutory authorities to conduct investigations of money laundering and other traditional financial crimes. ICE investigations can still cover the wide range of financial systems—including banking systems, money services businesses, bulk cash smuggling, trade-based money laundering systems, illicit insurance schemes, and illicit charity schemes—that could be exploited by money launderers and other criminals. According to ICE headquarters officials, ICE is investigating the same types of financial systems as before the Memorandum of Agreement.

Also, while the Memorandum of Agreement specifies that the FBI has primary investigative jurisdiction over confirmed terrorism-related financial crimes, the Agreement does not preclude ICE from investigating suspicious financial activities

⁷ As mentioned previously, Customs expanded Operation Green Quest in January 2003 by doubling the personnel commitment to a total of approximately 300 agents and analysts nationwide to work solely on terrorist financing matters.

that have a potential (unconfirmed) nexus to terrorism—which was the primary role of the former Operation Green Quest. To support investigations with a potential nexus to terrorism and other financial crimes investigations, in July 2003, ICE launched Operation Cornerstone, a new financial investigative program designed to identify and eliminate vulnerabilities in financial systems that could be exploited by individuals, criminal organizations, and terrorists. According to ICE headquarters officials, ICE will continue to aggressively investigate financial crimes within its jurisdiction, regardless of the origin of the targets or the source or destination of the money.

Further, ICE officials at headquarters and the three field locations we visited said the Agreement generally has not affected the agency’s relationships with the financial community. Through Operation Cornerstone, ICE plans to continue efforts to develop working partnerships with financial industry representatives to share information and identify and close industrywide security gaps that could be exploited by money launderers and other criminal organizations. The three financial regulators we contacted (the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission) also said the Agreement has not affected their relationships with ICE. The two financial institutions we contacted offered similar comments. The banking industry association representative we contacted said that it may be too soon to tell how the Agreement has affected ICE’s relationships with the financial community.

According to Financial Crimes Enforcement Network officials, the Memorandum of Agreement did not affect their agency’s procedures for collecting and disseminating financial leads, except in specific cases where the information was related to terrorist financing. The officials explained that after the Agreement was signed, the agency sent only those specific cases potentially related to terrorist financing to the FBI and no longer to ICE. In August 2003, ICE sent a letter to the Financial Crimes Enforcement Network announcing the creation of Operation Cornerstone and requesting that all leads be referred to Cornerstone, regardless of any alleged or apparent terrorist connection. In its letter, ICE noted that under the former Operation Green Quest, most referrals initially characterized as “terrorist-related financing” did not ultimately reveal a link to terrorism but were successfully investigated by ICE regarding other financial crimes. In its September 2003 response to ICE, the Financial Crimes Enforcement Network explained its process for referring terrorist-related leads to the FBI—based on its understanding of the Agreement—and offered to work with ICE to improve the vetting process if needed. In December 2003, the Financial Crimes Enforcement Network’s new Director made the decision to provide Operation Cornerstone with the same terrorist financing information as provided to the FBI.

Finally, ICE officials at the three field locations we visited said the Agreement generally has not affected their relationships with state and local law enforcement agencies. Specifically, at one location, after the Agreement was signed, local law enforcement agencies withdrew two agents from Operation Green Quest but subsequently replaced them with agents who did not specialize in terrorism matters. At a second location, after the Agreement was signed, 8 to 10 state agents stopped

working joint investigations with Operation Green Quest but subsequently continued to work with ICE on nonterrorism-related financial investigations.⁸ At a third location, state and local law enforcement did not support Operation Green Quest before the Agreement was signed. ICE officials at all three locations said the Agreement did not affect state and local support on other types of financial crimes investigations that were unrelated to terrorism.

The FBI and ICE Face Many Challenges in Implementing the Memorandum of Agreement

The successful implementation of the Memorandum of Agreement will require the FBI and ICE to address many operational and organizational challenges. First, the agencies face the task of finding common space for FBI, ICE, and other JTTF personnel to work together. Additionally, ICE personnel assigned to JTTFs may encounter obstacles to effective information sharing as agents requiring additional security clearances complete the time-consuming process for obtaining such clearances. At the organizational level, the FBI and ICE confront various challenges integrating organizational cultures and effectively coordinating resources. Shifting priorities and large-scale reorganizations in these agencies produced a certain amount of turmoil and anxiety, which initially was exacerbated by the Agreement, particularly for ICE agents, who may have perceived the Agreement as minimizing their role in terrorist financing investigations.

The most effective investigations of terrorist financing will bring to bear all relevant resources on the problem. The FBI and ICE face challenges in ensuring that the implementation of the Agreement does not create a disincentive for ICE agents to initiate or support terrorist financing investigations. Additional challenges involve ensuring that the financial crimes expertise and other investigative competencies of the FBI and ICE are effectively utilized and that the full range of the agencies' collective authorities—intelligence gathering and analysis as well as law enforcement actions, such as executing search warrants and seizing cash and other assets—are effectively coordinated.

Inherently, efforts to meet these challenges will be an ongoing process. Our interviews with FBI and ICE officials at headquarters and three field locations indicated that long-standing jurisdictional and operational disputes regarding terrorist financing investigations may have strained interagency relationships to some degree and could pose an obstacle in fully integrating investigative efforts. In addition, some of the ICE field officials we contacted had concerns about permanently detailing financial agents to JTTFs, partly because the officials were reluctant to have ICE agents supervised by FBI personnel. Further, FBI and ICE headquarters generally were not issuing joint communications to their field offices. For instance, the agencies had not issued joint guidance to all their supervisory agents regarding implementation of the Agreement. Rather, the agencies issued separate memorandums. Similarly, the agencies distributed separate memorandums

⁸ According to ICE officials, the 8 to 10 state agents were not detailed to Operation Green Quest but worked joint investigations with ICE on an ad hoc, as-needed basis.

to their field offices regarding the transition of certain ICE investigations to JTTFs. While the separate memorandums generally addressed the same issues, these communications varied in the specificity of the agencies' respective roles in pursuing the investigations. In summary, these examples indicate that establishing and maintaining effective interagency relationships will be a key determinant of continued progress in implementing the Agreement and achieving its ultimate goal.

Concluding Observations

The Memorandum of Agreement represents a partnering commitment by the FBI and ICE to wage a seamless, coordinated campaign against sources of terrorist financing. In the 9 months since the Agreement was signed, progress has been made. Continued progress will depend largely on the ability of the agencies to establish and maintain effective interagency relationships and meet various other operational and organizational challenges.

Agency Comments

We provided a draft of this report for review and comment to Justice, Homeland Security, and Treasury. The three departments did not comment on the overall substance of the draft report. We received responses from three Justice components (Criminal Division, FBI, and Executive Office for U.S. Attorneys), Homeland Security's ICE, and Treasury's Financial Crimes Enforcement Network. Four of the five respondents provided technical comments and clarifications, which have been incorporated in this report where appropriate. The fifth respondent, the Executive Office for U.S. Attorneys, had no comments. Also, we provided a draft of the applicable sections of this report for review and comment to the three federal financial regulatory agencies we contacted. The Federal Reserve Board said the draft sections accurately reflected the agency's position vis-à-vis ICE. A representative from the Office of the Comptroller of the Currency said he had no objection to the draft language. And, the Securities and Exchange Commission had no comments.

We are providing copies of this report to the Attorney General and the Secretary of Homeland Security. We also will make copies available to others on request.

If you have any questions about this report, please contact me at (202) 512-8777 or Danny R. Burton, Assistant Director, or Eric Erdman, Senior Analyst, at (214) 777-5600. Other key contributors to this report were Alison Heafitz, Allison Abrams, Barbara Keller, and Kathryn Young.



Richard M. Stana
Director, Homeland Security and Justice Issues

Enclosures – 3

Enclosure I

Objectives, Scope, and Methodology

Objectives

In May 2003, the Attorney General and the Secretary of Homeland Security signed a Memorandum of Agreement (Agreement) concerning terrorist financing investigations to help resolve jurisdictional issues and enhance interagency coordination. Regarding the Agreement, Senate Report 108-86 (July 2003)⁹ contained the following directive:

The Committee [on Appropriations] is concerned that the recent Memorandum of Agreement (MOA) between the Department of Homeland Security and the Department of Justice regarding investigations of terrorist financing will adversely affect the ability of the United States Secret Service (USSS) and the Bureau of Immigration and Customs Enforcement (BICE) to effectively carry out traditional financial crimes investigations. The Committee expects the General Accounting Office (GAO) to provide the Committee ... an evaluation of the MOA's impact on existing authorities of the USSS and BICE to effectively carry out financial crimes investigations, including the MOA's impact on the financial community and State and local cooperation.

Our work indicated that the Agreement does not apply to the Secret Service. Therefore, we did not focus on the Secret Service in our evaluation. Rather, in accordance with the congressional mandate—and as agreed with the offices of the Chairman and the Ranking Minority Member, Subcommittee on Homeland Security, Senate Committee on Appropriations—we addressed the following questions in reference to the progress of the U.S. Immigration and Customs Enforcement (ICE) and the Federal Bureau of Investigation (FBI) in implementing the Agreement:

- What is the status of the implementation of the Memorandum of Agreement?
- How has the Agreement affected the mission or role of ICE regarding investigations of financial crimes?
- What are the potential challenges to the successful implementation of the Agreement?

Scope and Methodology

To address these questions, our work focused on the federal entities primarily responsible for investigating and prosecuting terrorist financing and implementing the Memorandum of Agreement. Within the Department of Homeland Security (DHS), we focused principally on ICE (the component that is comprised of agents from the legacy U.S. Customs Service). Within the Department of Justice, we focused on the FBI—including its Joint Terrorism Task Forces (JTTFs) and Terrorist

⁹Title I of the Senate Appropriations Committee report on the Department of Homeland Security Appropriations Bill for 2004.

Enclosure I

Financing Operations Section (TFOS)—the Terrorist Financing Unit of the Criminal Division’s Counterterrorism Section, and U.S. Attorneys Offices.

Status of the Implementation of the Memorandum of Agreement

Preliminarily, we reviewed the Agreement to obtain an understanding of its various provisions. Also, we contacted headquarters officials from ICE, the FBI, and the Executive Office for U.S. Attorneys to discuss the implementation status of the Agreement and to identify and review applicable procedures or other guidance for implementing the Agreement. To obtain additional perspectives on the status of Agreement’s implementation, we visited ICE, FBI, and U.S. Attorneys Offices in three field locations. Each of the three locations was a major metropolitan area. However, due to law enforcement sensitivity of ongoing investigations, the three field locations are not disclosed in this report. We queried the field office officials about the implementation status of the MOA’s various provisions, and we reviewed available documentation of intra-agency and interagency communications on this topic. The views and opinions expressed by officials in the field locations may not be representative of officials nationwide.

Effects of the Memorandum of Agreement on the Mission or Role of ICE

To determine how (if at all) the Agreement has affected the mission or role of ICE—including impact on state and local law enforcement cooperation—we interviewed ICE headquarters officials and field officials in the three locations. Further, regarding financial community relationships, we contacted

- the Department of the Treasury’s Financial Crimes Enforcement Network;¹⁰
- regulatory officials at the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission;
- representatives from two large U.S. banks; and
- a representative from a banking industry association.

The results of these contacts are not necessarily representative of the entire financial community. Generally, based on relationships established in previous work, the interviewees were individuals who agreed to talk with us and were accessible within the limited time frames of our review.

¹⁰ A primary role of the Financial Crimes Enforcement Network is to support terrorist financing investigations through the facilitation of information sharing and networking among the law enforcement, regulatory, and financial communities. This role includes collecting and disseminating financial leads to law enforcement agencies.

Enclosure I

Potential Barriers to the Implementation of the Memorandum of Agreement

To identify potential barriers to the successful implementation of the Agreement, we interviewed ICE, FBI, and U.S. Attorneys Office officials at headquarters and the three field locations. Also, we reviewed agency memorandums and other communications regarding Agreement implementation.

Enclosure II

Memorandum of Agreement and Collaborative Procedures Concerning Terrorist Financing Investigations

In May 2003, the Attorney General and the Secretary of Homeland Security signed a Memorandum of Agreement (MOA) concerning terrorist financing investigations. Consistent with the MOA, in July 2003, the FBI and DHS/ICE agreed on collaborative procedures for determining whether appropriate ICE financial crime leads or money laundering investigations may be related to terrorism or terrorism financing.

The following sections of this enclosure provide the details of the MOA and the collaborative procedures, respectively.

Memorandum of Agreement Between the Department of Justice and the Department of Homeland Security

On May 13, 2003, the Attorney General and the Secretary of Homeland Security signed a Memorandum of Agreement that consisted of the following 11 paragraphs:

1. Definitions. For purposes of this agreement:
 - (a) “Secretary” means the Secretary of Homeland Security, and his successors, on behalf of all covered entities they head, supervise or represent.
 - (b) “Attorney General” means the Attorney General of the United States, and his successors, on behalf of all covered entities they head, supervise or represent.
 - (c) “Director” means the Director of the Federal Bureau of Investigation, and his successors.
 - (d) “Parties” means the signatories to this Agreement and their successors, on behalf of all covered entities they head, supervise or represent.
2. Understanding the importance of waging a seamless, coordinated campaign against terrorist sources of financing, the undersigned agree that the Department of Justice will, as part of its responsibilities as the lead law enforcement agency in combating terrorism, and in accordance with the President’s National Strategy for Homeland Security, lead the federal law enforcement effort against terrorist financing. The Federal Bureau of Investigation (FBI) will lead terrorist financing investigations and operations, utilizing the intergovernmental and intra-agency National Joint Terrorism Task Forces (NJTTF) at FBI Headquarters and the Joint Terrorism Task Forces (JTTFs) in the field to conduct terrorist financing investigations and operations. Through the Terrorist Financing Operations Section (TFOS), the FBI will provide overall operational command to the NJTTF and the JTTFs.

Enclosure II

3. The Secretary and the Attorney General will ensure that all appropriate information and intelligence relating to terrorist financing is shared with members of the NJTTF and JTTFs, including Department of Homeland Security (DHS) detailees, to the greatest extent permissible by law and applicable guidelines, and consistent with the March 3, 2003, Memorandum of Understanding Between the Intelligence Community, Federal Law Enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing. The parties agree to promptly take all reasonable and necessary steps to permit the maximum allowable information sharing relating to terrorist financing information and intelligence among the members of the NJTTF and the JTTFs. To further increase information sharing and coordination, the Attorney General and the Director agree to detail appropriate personnel to the financial crimes division of the Bureau of Immigration and Customs Enforcement (ICE). The Secretary shall ensure that such detailees are provided full and timely access to all data developed by ICE's money laundering and financial crimes cases on an ongoing basis.
4. After June 30, 2003, DHS will pursue terrorist financing investigations and operations solely through its participation in the NJTTF, the JTTFs, and TFOS, except as expressly approved by TFOS as provided in this paragraph. Both DHS and the Department of Justice (DOJ) will, however, continue independently to investigate money laundering and other financial crime matters that are unrelated to terrorism. DHS will focus its activities on protecting the integrity of U.S. financial infrastructures. To determine whether a money laundering or financial crime matter is related to terrorism or terrorist financing and to ensure effective deconfliction, all appropriate DHS leads relating to money laundering and financial crimes will be checked with the FBI. The parties agree to develop, as soon as possible but no later than June 30, 2003, specific collaborative procedures to enable the Section Chief of TFOS and Deputy Section Chief of TFOS detailed from DHS (or, if prior to the appointment of the Deputy Section Chief from DHS, the Associate Chief referenced in paragraph 3) to determine which leads should be provided to TFOS to enable TFOS to determine whether such leads may be related to terrorism or terrorist financing. Such procedures will provide for joint and continuous analysis of leads. Beginning on July 1, 2003, in any given matter, if TFOS determines that the matter is unrelated to terrorism or terrorist financing, the leadership of the investigation regarding the matter shall not be governed by this MOA. Determinations by TFOS shall take into account the following factors: strength of the terrorism or terrorist financing nexus; impact on the investigation of non-terrorism matters; and stage and development of the respective investigations. If TFOS, after consultation with DHS, determines that the matter is related to terrorism or terrorist financing, the investigation and operation of the matter shall be led by the FBI in accordance with paragraph 2. In pursuing investigations, TFOS will consider, among other things, the following factors: preservation of the government's flexibility and options to pursue investigations of both terrorism and non-terrorism matters; maintenance of the continuity of investigative personnel and management where appropriate (including the option, at the discretion of TFOS, to allow ICE to

Enclosure II

conduct terrorist financing investigations); and utilization of relevant expertise and authorities.

5. The parties agree that when the position of Deputy Section Chief of the TFOS next becomes vacant or by December 1, 2003, whichever comes first, the position shall be filled by a DHS employee detailed to the FBI, and shall continue to be filled by a DHS employee in the future. The employee will be chosen by mutual agreement of the Secretary and the Attorney General. Until such time as the position of Deputy Chief is filled by a DHS employee, the parties agree that a DHS employee shall be detailed to the FBI in a newly created position of "Associate Chief" of TFOS. The employee will be chosen by mutual agreement of the Secretary and the Attorney General.
6. The parties agree that the federal campaign against terrorist financing must utilize the significant expertise and capabilities of ICE. To this end, the parties will ensure that the appropriate ICE personnel have a significant and active presence on the NJTTF at headquarters and the JTTFs in the field. The Secretary will detail a significant number of appropriate personnel to the task forces, and the Director will ensure that the detailees are fully integrated into the FBI's efforts to combat terrorist financing, both at Headquarters and in the field, and are able to assist in the process described in paragraph 4, *supra*. The Secretary will ensure that the performance of DHS agents detailed to the FBI under this Agreement is recognized as a critical component of the DHS mission and that Customs Service's pre-existing financial investigative expertise is preserved and developed through recruitment, training and retention initiatives.
7. The Secretary agrees that no later than June 30, 2003, Operation Green Quest (OGQ) will no longer exist as a program name. The Secretary agrees to ensure that any future DHS initiative or program to investigate crimes affecting the integrity and lawful operation of U.S. financial infrastructure will be performed through the financial crimes division of ICE. DHS will investigate matters related to terrorism and terrorist financing only with the consent of the FBI in accordance with this Memorandum of Agreement.
8. The Attorney General and the Secretary shall direct the Director and the Assistant Secretary for ICE to provide a joint written report to the Attorney General, the Secretary, and the Assistant to the President for Homeland Security on the status of the implementation of this Agreement four months from the effective date of this Agreement.¹¹
9. The parties shall immediately pursue implementation of the terms of this Agreement. Within ten days of the effective date of this Agreement the parties

¹¹ As indicated in paragraph 10 below, "the terms of this Agreement shall be effective upon the signature of all parties." The Agreement was signed by applicable parties on May 13, 2003. Four months later would be mid-September 2003. However, according to ICE officials, the Agreement was not fully effective until the collaborative procedures were signed in July 2003. Therefore, the officials said the joint report was due in November 2003.

Enclosure II

shall jointly issue guidance to all FBI and ICE supervisory agents regarding this Agreement.

10. Except where otherwise indicated, the terms of this Agreement shall be effective upon the signature of all parties.
11. These provisions are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any individual or organization against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

Collaborative Procedures Pertaining to the Memorandum of Agreement

Consistent with the MOA dated May 13, 2003, the FBI and DHS/ICE jointly agree on the following collaborative procedures to determine whether appropriate ICE financial crime leads or money-laundering investigations may be related to terrorism or terrorism financing.¹² Nothing in this document shall supersede the written provisions in the aforementioned MOA. The following procedures pertain only to information and the operations of DHS/ICE:

1. DHS/ICE will establish a Joint Vetting Unit (JVU) within the Financial Information Analysis Section, which will continue to utilize the existing ICE vetting methodology to identify financial leads or investigations with a nexus to terrorism or terrorism financing consistent with the MOA.
2. The JVU will be staffed by DHS/ICE and FBI personnel who will have full access to relevant DHS/ICE and FBI databases to conduct reviews to determine whether a nexus to terrorism or terrorism financing exists in the appropriate DHS/ICE lead information or investigations. The JVU will establish a joint tracking system on investigative leads referred to the JVU and provide the assigned FBI personnel access to the system.
3. Throughout the collaborative vetting process, the determination of whether a DHS/ICE investigative referral or investigation is related to terrorism or terrorist financing shall be governed by the factors delineated in the MOA.
4. DHS will designate an ICE official to serve as the Deputy Chief of the FBI's TFOS. The Deputy Chief will have a fully integrated role in the evaluation and determination of whether a DHS/ICE referral or investigation has a nexus to terrorism or terrorism financing. The Deputy Chief and other DHS/ICE personnel assigned to TFOS will be provided complete and continuous access to FBI databases.
5. If, after collaborative consultation is made between the TFOS Section Chief and the DHS/ICE Deputy Chief, TFOS determines that a lead or investigation has a nexus to terrorism or terrorism financing, the matter will be investigated solely

¹² Michael Garcia, Assistant Secretary for ICE, signed the collaborative procedures on July 2, 2003. Robert Mueller, Director of the FBI, signed the collaborative procedures on July 7, 2003.

Enclosure II

through the NJTTF, JTTF and TFOS, except as expressly approved by TFOS as delineated in the MOA.

6. Beginning on or about July 1, 2003, DHS/ICE and the FBI will begin the joint collaborative review within the JVU of pending DHS/ICE terrorist financing investigations. The review process to determine nexus to terrorism and terrorism financing will be governed by the procedures as outlined in this document and as delineated in the MOA.

Enclosure III

ICE Investigations and Leads Identified as Having a Potential Nexus to Terrorism or Terrorist Financing

This enclosure summarizes the status of the vetting of U.S. Immigration and Customs Enforcement (ICE) investigations and leads regarding the following three sources:

- From July to October 2003, the Federal Bureau of Investigation (FBI) provided a list to the joint vetting unit of approximately 30 terrorist financing or terrorist subjects it believed had crossover with ICE investigations.
- In September 2003, the ICE vetting unit provided the FBI's Terrorist Financing Operations Section (TFOS) a computer disk containing more than 7,000 subject records.
- In addition, as of January 2004, the ICE vetting unit had provided 11 leads to TFOS to determine whether they may be related to terrorism or terrorist financing.

FBI Referral of Approximately 30 Investigative Subjects

From July to October 2003, the FBI provided a list to the joint vetting unit of approximately 30 terrorist financing or terrorist subjects (including individuals, businesses, and other entities) it believed had crossover with ICE investigations. According to ICE officials, the FBI was claiming sovereignty over any ICE investigation that related to these subjects, claiming these subjects had sufficient ties to terrorism or terrorist financing, per Memorandum of Agreement guidelines.¹³ The officials said that, in late-October, TFOS demonstrated that 10 of the approximately 30 subjects had a confirmed nexus to terrorism or terrorist financing and ICE agreed to transition the related ICE investigations to the FBI's Joint Terrorism Task Forces (JTTFs). Regarding the other subjects, as of February 2004, FBI and ICE officials were engaged in discussions to determine appropriate courses of action.

In late-2003, the FBI and ICE sent memorandums to their respective field offices to notify them about agreements reached regarding the 10 subjects. In general, the memorandums noted that future investigative activities related to these subjects would be conducted under the auspices of the JTTFs and that the FBI and ICE would make joint collaborative decisions on strategic and operational issues. The memorandums also addressed, in different levels of detail, the respective roles of the FBI and ICE in pursuing the investigations.

¹³ According to ICE officials, the approximately 30 subjects were related or linked to about 30 former Operation Green Quest leads and about 80 ICE investigations. The officials noted that (1) an ICE investigation can consist of multiple, related leads and (2) in some cases, leads may become multiple investigations due to location and subject associations.

Enclosure III

We visited three field locations where ICE investigations had been identified to be transitioned to the local JTTF. We found that the status of the transitions and the continuing role of ICE varied by location and circumstance.

- At one location, the investigative and prosecutorial strategy for pursuing the joint investigation had recently been developed at the field level by FBI, ICE, and U.S. Attorneys Office personnel. ICE had agreed to detail personnel to the local JTTF, and ICE and JTTF personnel were jointly working the investigation.¹⁴ The JTTF also had been supporting the ICE investigation before the Memorandum of Agreement.
- At a second location, the investigative and prosecutorial strategy for pursuing the joint investigation had recently been developed at the field level by FBI, ICE, and U.S. Attorneys Office personnel. ICE had agreed to support part of the JTTF investigation that involved violations within ICE's jurisdiction. However, ICE would not commit personnel to the JTTF, in part because of the distance between the ICE and JTTF offices.
- At a third location, ICE had provided its investigative files to the JTTF and was not supporting the investigation. In January 2004, ICE headquarters officials said the files were turned over during a period of initial confusion about the role of ICE under the Agreement. The officials said that they have asked the ICE field office to contact the JTTF to determine if ICE support is needed on the investigation.

ICE Provided TFOS More Than 7,000 Subject Records

In September 2003, the ICE vetting unit provided TFOS a computer disk containing more than 7,000 subject records—including individuals, businesses, and other entities—that were related to all open former Operation Green Quest leads in ICE's financial investigations database. According to ICE officials, ICE requested that the FBI identify any positive subject record hits in FBI databases, so that ICE field offices could be advised of FBI investigative interests or crossover investigations. As of February 2004, the FBI had not provided the final disposition to ICE on the results of the FBI's subject record checks. According to an FBI official, TFOS was in the process of running the ICE subject records through FBI databases to determine whether the FBI had ongoing investigations involving the same subjects.

ICE Provided TFOS an Additional 11 Leads

In addition, as of January 2004, the ICE vetting unit had provided 11 leads to TFOS to determine whether they may be related to terrorism or terrorist financing. According to TFOS, some of the ICE leads were found to have either a nexus to terrorism or crossovers with nonterrorism-related FBI investigations. However, TFOS determined

¹⁴ At the time of our review, the local JTTF did not have enough space to accommodate the ICE personnel. As a result, the joint investigation was being conducted out of the ICE field office, with FBI personnel visiting the ICE office two or three times each week.

Enclosure III

that none of the 11 ICE leads had a significant connection to an FBI terrorism investigation. Therefore, the leads would not be governed by the Memorandum of Agreement and ICE could continue to pursue them.