

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
DON NICKLES, OKLAHOMA
TRENT LOTT, MISSISSIPPI
OLYMPIA J. SNOWE, MAINE
JON KYL, ARIZONA
CRAIG THOMAS, WYOMING
RICK SANTORUM, PENNSYLVANIA
BILL FRIST, TENNESSEE
GORDON SMITH, OREGON
JIM BUNNING, KENTUCKY

MAX BAUCUS, MONTANA
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
TOM DASCHLE, SOUTH DAKOTA
JOHN BREAUX, LOUISIANA
KENT CONRAD, NORTH DAKOTA
BOB GRAHAM, FLORIDA
JAMES M. JEFFORDS (I), VERMONT
JEFF BINGAMAN, NEW MEXICO
JOHN F. KERRY, MASSACHUSETTS
BLANCHE L. LINCOLN, ARKANSAS

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
JEFF FORBES, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

December 22, 2003

Mr. Richard Newcomb
Director
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Director Newcomb:

The purpose of this letter is to inquire about the effectiveness and efficiency of the Office of Foreign Assets Control (OFAC), and its crucial role in the war on terrorism, specifically choking off the finances of terrorists. As the Chairman and Ranking Member of the Senate Finance Committee, which oversees the Treasury Department and its components, we are responsible for conducting oversight to ensure government agencies are performing to the best of their ability, especially when it comes to our nation's security against terrorists.

OFAC administers a series of laws that impose economic and trade sanctions against hostile targets – such as terrorist groups, narcotics organizations and rogue nations – to further U.S. foreign policy and national security objectives. One of OFAC's most important charges is to ensure that financial institutions do not engage in transactions with these groups, and when they do so, to enforce civil and criminal penalties.

Sanctions are a key part of the nation's efforts to stop the money-laundering that keeps the machinery of terrorism and the narcotics trade moving. Accordingly, OFAC and its mission play an important role in the current war on terrorism, in efforts to enhance national security, and in the fight against the illegal drug trade.

We have a number of concerns and questions about OFAC and its operations regarding:

- whether OFAC is designating groups and individuals as terrorists, and ordering the freezing of assets, as quickly as it should be;
- its enforcement and knowledge of violations of sanctions and financial transaction restrictions, a problem highlighted in a report by the Treasury Department Office of Inspector General (OIG), and whether OFAC has made related reforms and improvements, or appropriate requests to Congress for expanded powers, suggested in your reply to a Senate Finance Committee inquiry;

- internal management and record-keeping issues that could curtail OFAC's ability to carry out its mission and aid other government agencies;
- OFAC's compliance with Section 304 of Public Law 102-138, as amended by Public Law 102-236, which requires annual reports to Congress about terrorist assets; and
- coordination with other agencies.

Efficient and Effective Designation of Terrorists, and Freezing of Assets

In at least two instances since the terrorist attacks of September 11, 2001, news reports have highlighted that non-U.S. agencies have identified persons as linked to terrorism and terrorism financing before OFAC did so. If this is true, it is cause for concern. The United States government, and specifically OFAC, should be leading the charge internationally to disrupt terrorism funding. Other nations rightly look to the United States for leadership and information in the war on terrorism. We should not be playing catch-up.

The most recent report was in the October 2003 edition of Money Laundering Alert in an article by Moyara Ruehsen, an associate professor at the Monterey Institute of International Studies in California. Ruehsen's article is based on a December 19, 2002 United Nations Security Council report, entitled "Terrorism Financing: Roots and trends of Saudi terrorism financing," by Jean-Charles Brisard. Ruehsen reported that three persons named in the UN report - Khalid bin Mahfouz, Mohammed Hussein al Amoudi, and Adel Abdul Jalil Batterjee - "created, chaired or ran organizations that OFAC determined were aiding the financing of terror" but were not on OFAC's list at the time. The problem was that while the UN report identified these persons as being involved in terrorist financing, OFAC apparently had not. Moreover, OFAC had enough information to accuse the organizations of aiding terrorist financing, but somehow failed to also identify these persons as aiding terrorist financing, despite their clear links to the groups already listed by OFAC.

Questions about Efficient and Effective Designation of Terrorists, and Freezing of Assets

1) A) Has OFAC designated as terrorists, frozen the assets of or otherwise taken action against Mahfouz, al Amoudi and Batterjee? If so, please provide the date, and a specific description of the action taken.

B) Please identify the organizations, groups or entities - which OFAC may have determined are linked to terrorism - that each of the three persons created, chaired, ran or were otherwise associated with. Also, state the specific action OFAC took toward the organizations, groups or entities, and when each action took place.

C) Please identify any other individuals or groups which the UN report linked to terrorism but were not on any OFAC list for frozen assets, terrorist designation or other categories at the time the UN report was issued.

D) Please explain why OFAC would not designate or list individuals but would designate or list the organizations they played a significant role in.

Soon after the attacks of September 11, 2001, the Associated Press reported that the United Nations and European Union in early 2001 had ordered their members to freeze the assets of a number of suspected high-ranking Al Qaeda members and close associates of Osama bin Laden, but OFAC did not do so until mid-October 2001. The AP reported that the persons were: Sa'd Al-Sharif, bin Laden's brother in law; Amin Al-Haq, security coordinator for bin Laden; Bilal bin Marwan, a top lieutenant; Saqar Al-Jadawi; and Ahmad Sa'id Al-Kadr.

Questions about Efficient and Effective Designation of Terrorists, and Freezing of Assets.

E) Please explain why OFAC did not order these individuals' assets to be frozen before or immediately after the UN and EU did so.

F) What steps has OFAC taken in the past two years to ensure its lists are consistent or up to date with others?

G) To what extent does OFAC coordinate its designations with the UN or the EU?

Ability to Detect Sanctions Violations

The Treasury OIG's report, "FOREIGN ASSETS CONTROL: OFAC's Ability to Monitor Financial Institution Compliance is Limited Due To Legislative Impairments," (April 26, 2002; OIG-02-082), raises a number of concerns about the effectiveness of OFAC's enforcement of sanctions and prohibited transactions. One problem, the report states, is OFAC's over-reliance on public awareness and voluntary compliance. With the stakes to our national security and to the war on terrorism so high, OFAC must close these gaps, refocus, and use more aggressive and direct enforcement to carry out its mission. Because OFAC is not classified as a "bank regulator," it is barred by law from monitoring, or "testing," financial transactions to ensure compliance. The report states that "Transaction testing is critical, however, to determine whether a prohibited transaction has been allowed." In addition to relying on financial institutions to confess their violations, OFAC is forced to rely on banking regulatory agencies – Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Federal Reserve System (FRS), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA) – to monitor sanctions compliance and inform OFAC of violations. Checking for compliance with OFAC sanctions and restrictions is not the top priority of bank regulators, who use a "risk-based" approach to their examinations. This approach means "transaction testing is rarely performed by the financial institution regulators," the report states.

Even if the regulators do find problems, they “do not, on a systematic basis, provide OFAC with the results of their compliance examinations,” the report states. These problems are potential loopholes for terrorists’ funds to escape detection. The OIG report recommended that the Treasury Department ask the Congress for authority for OFAC to ensure compliance with sanctions. One way for OFAC to achieve this authority is for the Right to Financial Privacy Act (RFPA) to be amended to make OFAC a “bank regulator.” This would allow OFAC to perform transaction testing and allow the other bank regulators to share information more easily.

To our knowledge, no request for this authority has been made to Congress, despite the handicaps outlined in the OIG’s report. You insisted to the OIG that relying on voluntary compliance and a “web” of compliance is effective. In your July 25, 2002 response to the Finance Committee, you wrote that “we do not have any legislative proposals to put forward that we feel would constructively address the issue.” Instead, you wrote that one way to accomplish transaction testing is “to press through interdepartmental channels, such as the Federal Financial Institutions Examination Council, for more thorough testing by current bank regulatory agencies.” This leaves OFAC in a position of not knowing what it does not know. While many responsible financial institutions report their own violations when they are detected, we do not have the luxury of assuming that all financial institutions do this. The dangers of terrorism financing operating unhindered are too great to take a passive approach.

You also wrote that certain amendments to the RFPA could help OFAC, but that Treasury does not believe making OFAC a bank supervisory agency is necessary. You wrote that amending parts of the RFPA (specifically 12 U.S. Code Sec 3412(d) and 12 U.S. Code Sec. 3413(g)) to make information sharing easier “could be a good first step in addressing the problem of information sharing. We are actively reviewing this option at this time.”

Questions about Ability to Detect Sanctions Violations

2) A) Describe in detail what actions, if any, OFAC has taken to press through interdepartmental channels, such as the Federal Financial Institutions Examination Council, or through individual bank regulatory agencies, for more thorough testing by current bank regulatory agencies. Your reply should deal with the Council and each agency in detail.

B) What were the results of OFAC’s efforts to push through interdepartmental channels? Please be specific about the response(s) of the Council and each agency, the final decision or agreement reached, if any, and the results. Regarding the results, please provide benchmark and/or performance statistics and goals (such as the number of times each agency shared information on sanctions violations, and what the results of that were) that will enable the Congress to evaluate whether OFAC, the Council and bank supervisory agencies fulfilled their responsibilities.

C) In the year and a half since you wrote your reply, do you still believe OFAC does not need authority to ensure financial institutions comply with foreign sanctions, particularly by performing transaction testing?

D) Do you still believe OFAC does not need to be defined by law as a bank regulator or bank supervisory agency so it can perform transaction testing or have greater access to information of other bank supervisory agencies?

E) Do you still believe amending the parts of the RFPA you mentioned and/or other parts would help OFAC, specifically with information sharing? If so, what are OFAC's plans, if any, to request such changes in the law?

F) What was the result of the active review OFAC and/or Treasury was conducting at the time you wrote your July 25, 2002 reply?

G) What decisions, if any, did OFAC and/or Treasury reach in reviewing whether the RFPA should be amended?

H) Does OFAC and/or Treasury plan to request Congress make any legislative changes in these areas or others in the near future?

I) Please describe in detail whether and specifically how regulations implemented under Section 314 of the USA Patriot Act have allowed financial institutions, bank regulators and OFAC to share information. Your answer should include the results of information shared with OFAC under the authority of these regulations, such as investigations initiated, fines proposed and levied, and other civil or criminal actions.

J) Please explain any other actions that OFAC has taken in response to, or that could help solve, these problems highlighted by the OIG.

Management and Records Keeping Problems

The OIG report identified other challenges in OFAC's internal management practices, specifically, its record-keeping problems. The report found accuracy problems within the database of blocked and rejected transactions, particularly with duplicate entries. The OIG also found that OFAC's database of blocked and rejected transactions is not reconciled with the records of such transactions submitted by financial institutions. Inaccurate information is not only inefficient, but impairs OFAC's ability to aid other agencies.

OFAC has another internal control problem in its Licensing Division. OFAC has the authority to license, or allow, transactions that are normally prohibited under the sanctions program. Accuracy and accountability for licenses are very important because licenses are essentially exceptions to the rules and laws. Despite the importance of tracking licenses, the

report found that "OFAC has very little assurance that the statistical information on the number, purpose, and status of licenses is complete and accurate." The OIG report stated that OFAC planned to switch from "the current R-Base program" to "Oracle."

In your July 25, 2002 reply to the Committee, you stated that OFAC strongly concurs with the OIG's recommendations to improve in these areas, and you outlined a number of actions OFAC was undertaking to do so.

Questions about Management and Records Keeping Problems.

3) A) Please describe in detail OFAC's work with a consultant since early 2002 to improve data processing and records management, in an effort to move from a paper-based system to a more digital-based system. Your reply should include:

i) - The name of the contractor, when it began work, when it finished its work or scheduled to be finished, the total payments to the contractor to date, and the amount of the planned or anticipated payments to the contractor.

ii) - The specific goals of the contractor, any performance measures put in place for the contractor. Please supplement this answer with relevant documents.

B) Please explain in detail the role and duties of the Sanctions Monitoring Specialist, whose primary responsibility is to manage OFAC's database of Blocked and Rejected Transactions. Your answer should include the documented goals and performance measures for the specialist, whether those have been achieved, and the reasons for why any of them have not been achieved.

C) Please explain in detail whether and how financial institutions are using OFAC forms posted on your Web site for filing reports on blocked and rejected transactions, and the dedicated email box for electronic filing of these reports. Your answer should provide an estimate of the number of institutions that use these methods, how many filings OFAC has received through these methods, and any advantages or disadvantages since OFAC made these methods available.

D) What was the result of OFAC's discussion with Treasury's Internet Service provider about fully automating the filing process through a secure portal, and what was the result of OFAC's request for a price quote for this? Please explain in detail.

E) Please describe in detail how OFAC was, and whether it still is, working with the twelve U.S. financial institutions which file the highest volume of blocked and rejected reports to develop unified criteria for electronic filing. Your answer should include the results of a meeting you wrote was scheduled for early August 2002 with the New York Clearing House banks on this topic.

F) Please describe in detail whether and how OFAC switched its licensing system from the old correspondence tracking system to Oracle, a database. Your answer should include when this transition occurred, how much it cost, and the advantages and efficiencies, or disadvantages and inefficiencies, of the new system.

G) Please describe in detail whether and how OFAC has implemented any other recommendations or changes from the OIG report, or any plans in its response to the OIG. Your answer should include specifics on what the changes, recommendations and plans were, whether they were achieved or how close OFAC is to achieving them, and other relevant, specific information.

Compliance with Reporting Requirement to the Congress

We are also concerned about whether OFAC is complying with the letter and spirit of the law that requires annual reports to Congress on terrorist assets and terrorist organizations. As you know, this report is mandated by Section 304 of Public Law 102-138, as amended by Public Law 102-236.

Our concern centers around the “classified” version of the Terrorist Assets Report, which OFAC traditionally has provided to Congress in an appropriately secure manner. When Committee staff began inquiries to locate these classified reports, they learned that OFAC apparently has either stopped producing them, or stopped providing them to Congress, at least in an appropriately secure manner. Classified information is to be provided to the Office of Senate Security, which is trained and equipped to receive, handle and log-in classified information. Senate Security reported to the Committee that it is not in receipt of any classified versions of this report, or any classified attachments. An OFAC official reported to Chairman Grassley’s staff that the report was delivered to the Finance Committee at its usual time. No such report is in the Committee’s files. Moreover, agencies should not drop off classified information at committee offices. In its November 13, 2003 response to the Committee OFAC delivered copies of the unclassified reports dating back to 1995. We ask that you deliver a copy of the classified reports or classified attachments for the past 10 years to Senate Security for review by our staff. We ask that the relevant OFAC official inform our staff when this delivery will take place.

We also have concerns because record keeping problems, which we outlined earlier, could contribute to inaccuracies in this report to Congress. OFAC’s database of blocked and rejected transactions, which is not reconciled with reports from financial institutions, is used to write the report to Congress. We are confident OFAC officials make every effort to ensure the annual report to Congress is accurate, but the problems with the database of blocked and rejected transactions must be addressed so the reports are as accurate as possible.

Questions about Compliance with Reporting Requirement to the Congress.

4) A) Please explain in detail if OFAC has stopped delivering, or stopped producing, copies of the classified Terrorist Assets Report or classified attachment. Also, please provide a detailed explanation for your answer.

B) If OFAC has stopped delivering the classified report or attachment, please begin delivery again according to the instructions above. If OFAC has stopped producing the classified report or attachment, please explain why in detail. For example, has OFAC stopped doing work which, if reported to Congress, would be classified, or has it elected not to report classified work which used to be reported to Congress?

Coordination with Other Agencies

At a recent briefing to staff of the Senate Judiciary Committee, officials with the Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC) – the government's new effort to create a consolidated watch list of terrorists – said they anticipate OFAC, among other agencies, will be a full partner. In your November 13 response to the Committee, you described examples of how OFAC has coordinated with the FBI and other law enforcement agencies, but made no mention of the TSC.

Questions about Coordination with Other Agencies.

5) A) Please describe in detail contact between OFAC and officials at the FBI and TSC regarding OFAC's role with the TSC.

B) Please describe in detail plans and proposals for OFAC to work with the TSC, particularly the details of how OFAC will provide the names of designated terrorists, the names of associates and members of designated terrorist groups, and the names of persons whose assets have been ordered frozen.

C) Please describe in detail what, if any, role OFAC played in assisting the Secretary of State to comply with Sec. 1006 of the USA Patriot Act, which calls for the Secretary to ensure aliens engaged in money laundering do not enter the United States, primarily by developing a watch list.

You testified at a July 31, 2003 Senate hearing that OFAC has considered sanctions or other action against charities, banks and other organizations or entities, including those connected to Saudi Arabia, but ultimately did not impose those sanctions or actions.

You also testified that OFAC had made recommendations to the Policy Coordinating Committee (PCC) that sanctions or other actions be imposed or taken against charities, banks and other organizations or entities, including those connected to Saudi Arabia, but that officials from

other agencies had denied or not adopted OFAC's recommendations.

Questions about Coordination with Other Agencies.

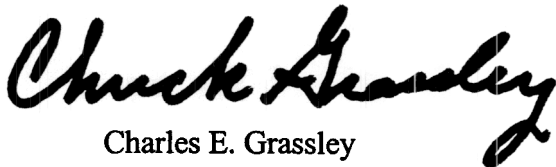
D) Please identify by name all charities, foundations, banks and other organizations or entities, especially those connected to Saudi Arabia, that OFAC has investigated and considered sanctions or other action against, but then not imposed the sanctions or actions on them, for the time period of September 11, 2001, through today. Also, please provide a detailed explanation of the reason why sanctions or other actions were not imposed.

E) Please identify by name all charities, foundations, banks and other organizations or entities, especially those connected to Saudi Arabia, that OFAC has made recommendations to the PCC that sanctions or other actions be imposed or taken against them, but that officials from other agencies, or the PCC as a whole, denied or did not adopt. For each recommendation that was denied or not adopted, please identify the agency or agencies that denied or did not wish to adopt OFAC's recommendation. Also, please provide a detailed explanation of the reasons that the agency or agencies cited for denying or not adopting OFAC's recommendation.

You suggested in your testimony that some of this information may be classified. If so, OFAC officials should deliver the information to Senate Security for review by our staff. We also welcome a classified briefing from officials at OFAC and other agencies on this topic. If necessary, the Chairman will provide the appropriate authorizations under 6103 of the Internal Revenue Code so that Finance Committee staff will be able to review this information.

We thank you in advance for your cooperation with Congressional oversight, and we look forward to working with you constructively in the war on terror. OFAC has a tough job, and we appreciate the challenges you face and the job you are doing. We would appreciate a reply by Friday, January 30, 2004, and we ask that OFAC officials keep our staff up to date on your progress in answering these questions.

Sincerely,



Charles E. Grassley
Chairman



Max Baucus
Ranking Member