

Written Testimony of
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Before the
Committee on Financial Services
Subcommittee on Oversight and Investigations
United States House of Representatives

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Chairwoman Kelly, Congressman Gutierrez and Distinguished Members of the Subcommittee on Oversight and Investigations, thank you for inviting me to testify today about my views on terrorist responses to improved financial defenses by the United States.

Chairwoman Kelly, I would like to commend you in particular for addressing head-on the complex issue of the terror financing through your introduction in September, 2004 of H.R. 5124, a terror financing certification regime, and your continued commitment to this issue.

My remarks are informed by the report of an Independent Task Force on Terrorist Financing, sponsored by the Council on Foreign Relations, on which I served as Vice-Chair. Because the report, along with its various appendices, is almost 300 pages in length, I will only be able to highlight certain core points relevant to this Subcommittee and ask that the full report and its appendices be placed into the record. I am testifying in my personal capacity, as is customary, and not on behalf of the Task Force or the Council on Foreign Relations.

I realize that the Members of the Subcommittee are by now well informed about various methods of terror financing through the work of the 9-11 Commission and from the testimony of others that have appeared before you. Therefore, my testimony today will set forth instead constructive, forward-looking recommendations that Congress can undertake to improve U.S. efforts against terrorism financing.

First, U.S. policymakers must build a new framework for bilateral relations with all nations which includes discussion of those “domestic” issues that affect U.S. security but which formerly were considered internal policies and thus, were “off the table”. Many terrorist organizations such as al-Qaeda, a terrorist organization rooted in issues central to Saudi Arabian domestic affairs, conspire to kill Americans and to threaten our way of life. When “domestic” issues of any nation threaten Americans at home and abroad, these issues can no longer be “off the table” in our bilateral relationship—rather, they must be addressed directly and openly.

Second, a Treasury-led certification regime specifically on terrorist financing should be a part of the new framework of directly addressing internal policies of other nations as these policies affect our national security.

A certification regime should require the Treasury Department to provide a written certification on an annual basis (classified in whole or in part, if necessary) detailing the steps each foreign nation has taken to cooperate in U.S. and international efforts to combat terror financing. To be truly meaningful, a certification regime must focus on the extent to which the nation actually implements its laws and regulations and is effective in combating terror financing as well as its enactment and promulgation of new laws and regulations.

The certification regime should provide for sanctions under section 311 of the Patriot Act--including denial of U.S. foreign assistance monies and limitations on access to the U.S. financial system--on nations that do not receive certification. Of course, sanctions would be subject to waiver by the President if required by vital U.S. national interests.

Critics of certification regimes have argued that presidential waivers render such regimes ineffectual because waivers can be overused – as, for example, has been claimed in the drug certification regime context. I believe, however, the high national attention and priority placed on the war on terror will result in a much more effective certification regime for terror financing than for drugs. The paramount importance to the US of preventing and limiting future terror acts imposes an obligation on Congress to preserve the integrity of a terror financing certification regime by limiting or regulating the availability of national security waivers if necessary.

Although the Patriot Act gives the Administration powerful tools against terror financing, my understanding is that the Administration has used its section 311 powers only once in the terror financing context. Section 311 allows Treasury to require domestic financial institutions and agencies to take “special measures” against certain parties, including both institutions and jurisdictions, believed by the Treasury to be engaged in money laundering/terror financing. These special measures can include placing prohibitions or conditions on “correspondent” or “payable through” accounts involving the parties engaged in the money laundering/terror financing. A certification regime for terror financing would ensure that the special measures provided by the Patriot Act are used appropriately and thoughtfully against “rogue” jurisdictions.

Of course, foreign financial institutions and jurisdictions that do not have significant financial relations with the United States would not be meaningfully impacted by Section 311 sanctions triggered by non-certification. It should be noted, however, that a similar sanction imposed in the money laundering context resulted in the targeted jurisdiction immediately promulgating desired legislative and regulatory changes.

A separate certification regime for terror financing – distinct from any other reporting requirements on the promulgation of terror itself or money laundering – ensures that stringent requirements are maintained—and revisited annually—with respect to each jurisdiction’s practices on terror financing.

With respect to the terror financing certification regime proposed by Chairwoman Kelly, U.S. News and World Report reported on October 4, 2004, “the State Department appears unenthused because it could end up citing allies like Indonesia, Nigeria, and the Philippines.” A certification regime is required precisely because the U.S. policymakers may choose to minimize diplomatic friction by avoiding criticism of the policies of certain other nations. A certification regime would require the Executive Branch to review on an annual basis the policies and progress of each nation on the subject of terror financing, without regard to whether such nation is a so-called “ally” of the United States.

Third, Congress must also consider how financial support for the export of radical Islam or *Wahabism* around the world fits in with the U.S. agenda on curbing terror financing. Congress appears to have reached a consensus that providing support for terrorist training camps and infrastructure constitutes “terror financing” along with support of the direct costs of carrying out terror acts. Congress may need to explore how support for *madrassas*, mosques, cultural centers, other institutions and the training and export of radical clerics pose a threat to US interests. These institutions and clerics radicalize millions of Muslims around the world and quite possibly, create the next generation of terrorists. The fact that financial support for these institutions may be motivated by sincere and deeply held religious and philanthropic beliefs on the part of some donors makes this inquiry very difficult. Still, Congress should seriously consider whether or not nations and individuals that support the export of radical Islam can really be our “allies”— or actually constitute indirect financiers of terror that pose a strategic threat to the U.S.

Fourth, additional coordination is required by the Administration on terror financing. The Administration has made progress in coordinating U.S. measures to combat terrorist financing through the Office of Terrorism and Financial Intelligence (TFI) at the Department of Treasury, and I commend the Administration for this effort. Because decision-making on the war on terror is centralized in the National Security Council (NSC), a position needs to be added at the White House for a person specifically responsible for terror financing so that this issue is fully integrated in the broad discussions of and decisions on how to prosecute the war on terror. A formal allocation of responsibility to this position in the terror financing area should be formalized through a National Security Presidential Directive (NSPD) or otherwise.

Fifth, the U.S. government should increase sharing of information with the financial services sector as permitted by Section 314(a) of the PATRIOT ACT so that this sector can cooperate more effectively with the U.S. government in identifying terror financiers. Helping private sector financial institutions become effective partners in identifying financiers of terror should be a top priority. The procedures set forth in Section 314(a) of the Patriot Act, which promote information sharing between the U.S. government and financial institutions to increase detection of terror financing, are not working as well as they should. Banking industry officials tell me that the U.S. government is still not providing financial institutions with adequate information to enable the institutions to detect terror financing and identify unknown perpetrators. The government is using financial institutions primarily to assist in investigating known or suspected terror financiers, not in identifying unknown ones. Very little information is flowing from the government back to financial institutions that spend considerable resources on compliance with the government's information requests. In addition, our government does not currently have the appropriate resources to process and make full use of information that is flowing to it from financial institutions.

I recognize that the information that would enable financial institutions to become effective partners with the U.S. government in identifying terror financing may be highly protected intelligence information. In other industries such as defense and transportation, however, persons can be designated by the U.S. government to receive access to certain high value information as necessary. A similar approach could be used to facilitate information sharing and cooperation between the U.S. government and private financial institutions. I would encourage this Subcommittee to hold an oversight hearing on Section 314 of the Patriot Act to determine whether more effective procedures for information sharing with financial institutions can be developed.

Sixth, the National Security Council (NSC) and the White House Office of Management and Budget (OMB) should conduct a cross-cutting analysis of the budgets of all U.S. government agencies as they relate to terrorist financing. Monitoring the financial and human resources that are actually devoted to the various tasks involved in combating terrorist financing will facilitate fully informed, strategic decisions about whether resource allocations are optimal or functions are duplicative. For this reason, the NSC and OMB should conduct a cross-cutting analysis of all agencies' budgets in this area, to gain clarity about who is doing what, how well, and with what resources. With an appropriate cross-cut in hand, the Administration and Congress can begin to assess the efficiency of existing efforts and the adequacy of appropriations relative to the threat.

Seventh, promoting understanding of cultural differences in finance systems required for useful intelligence gathering should be the work of cooperative efforts between the U.S. government and private foundations, universities, and think tanks. At the dawn of the Cold War, the U.S. government and U.S. nongovernmental organizations committed substantial public and philanthropic resources to endow Soviet studies programs across the United States. The purpose of these efforts was to increase the level of understanding in this country of the profound strategic threat posed to the United States by Soviet

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Communism. A similar undertaking is now needed to understand the methods and modalities of the financing and global propagation of radical Islamic militancy which I believe constitutes the greatest strategic threat to the United States at the dawn of this new century.

I look forward to your questions.