

**TITLE III OF THE PATRIOT ACT:**  
**A REVIEW OF EFFECTIVENESS IN COMBATING**  
**TERRORIST FINANCING**

by  
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### **Abstract:**

The September 11, 2001 terrorist attacks marked a paradigm shift in United States national security policy from one based on deterrence of hegemonic rivals to one based on counterterrorism. Initial counterterrorism efforts focused squarely on the main perpetrators of the attack, Al Qaeda, but in his war declaration address to a joint session of Congress on September 20, 2001, President Bush outlined the forthcoming shift- “Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.”<sup>1</sup>

Since President Bush’s declaration of a global war on terror in September 2001, Al Qaeda, due to concentrated efforts focused on proactive intelligence gathering and military interdiction, has been degraded. Due to this fractured network, Al Qaeda has devolved into loosely connected sub-sects, affiliate organizations, and non-affiliate sympathizers. Given this transformation, and the terrorist networks that persist, Al Qaeda, its affiliates, and the terrorist groups that continue to target the United States remain of primary national security concern.

One of the major focuses, manifested in the passage of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Patriot Act), is an effort to combat terrorist financing. Given the unconventional means of a terrorist attack, coupled with the freedom with which operational funds can move from country to country, terrorist financing poses a particularly nuanced threat. Nearly fifteen years have passed since the 9/11 attacks and it is critical to United States national security to reflect on the country’s counterterrorism

efforts, learn from successes and failures, and make appropriate changes to ensure that the United States continues to adequately address the ever-changing nature of terrorist threats. Is the country safer? Have we achieved the goal of effectively combating terrorist financing?

By looking at the effect of Title III of the Patriot Act domestically, internationally, and on informal financial networks, we can assess the successes and failures of the financial provisions of the Patriot Act.

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<sup>1</sup> The Office of the President of the United States, “Address to a Joint Session of Congress and the American people,” <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>

## Preface

### *Acknowledgments*

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## **Introduction:**

National Security. When evaluating the term in its most elemental sense, many would identify its meaning as the concept of global powers posturing to protect themselves from equally powerful competitor countries. The meaning is justifiable when looking through a historical scope. However, with global powers in a relative peace, United States national security policy in the modern era, prompted by the September 11, 2001 attacks, has broken from tradition to address the threats of the day.

2,977.<sup>2</sup> This number, overwhelming in its significance, has defined modern United States national security policy. On September 11, 2001, 2,977 men, women, and children, were killed in a coordinated terrorist attack on the United States. Since that time, United States national security policy has continually changed to address the asymmetric threat posed by terrorism. Counterterrorism strategy has come to mean an absolute and all-encompassing effort from the public and private sector alike. Since 9/11 the United States has worked on a multi-agency and global level to defend against the threat posed by non-state actors who blend into an increasingly ambiguous global network. Of these efforts, one of the major focuses has been tracking and defeating terrorist financing networks.

As with any enterprise, the acquisition and distribution of capital is paramount to operational success. In response to the 9/11 attacks, the United States government established tough financial restrictions in efforts to disrupt and dismantle terrorist funding streams. The most significant public policy outcome of the 9/11 attacks is the Uniting and Strengthening America by Providing Appropriate Tools Required to successfully

Intercept and Obstruct Terrorism Act of 2001, commonly referred to as the Patriot Act (Public Law 107-56). Of the laws 10 sections, Title III of the Patriot Act focuses on the establishment of enhanced financial provisions. The financial provisions in Title III mandate increased due diligence in tracking, maintaining, and investigating financial transactions. The aim of Title III of the Patriot Act is to uncover terrorist funding streams and disseminate that information to the appropriate law enforcement personnel to take action. In answering the question of whether or not Title III has been effective in combating terrorist financing, this paper will examine the law's implementation and measure the law's success through a review of terrorist financing enforcement actions taken as a result of the Title III provisions.

In the fight to dismantle terrorist financing networks, it is critical to devote adequate resources to programs and agencies that effectively uncover these networks. Section I of this paper will look inward at the effect of Title III of the Patriot Act on domestic policies. Section I of this paper will test the Patriot Acts effectiveness through a review of Suspicious Activity (SAR) and Currency Transaction (CTR) Reports filed by financial institutions since 9/11, and the amount of terrorist related enforcement actions that have resulted due to the added reporting. While the Patriot Act was a major overhaul affecting operations on multiple levels, Section I will focus directly on the financial provisions within Title III of the act that directly pertain to domestic policies. It bears mentioning other institutional moving parts associated with tracking terrorist financing from a domestic standpoint. For the purpose of Section I, the Patriot Act will be of primary focus but given the paralleling objectives, sometimes different strategies and

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<sup>2</sup> CNN Library, "September 11<sup>th</sup> Fast Facts," last modified March 27, 2015, <http://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/>.

policies brush up against one another in order to achieve a common goal. The Bank Secrecy Act of 1970 established reporting of records of primary concern through the Currency and Foreign Transactions Reporting Act (CFTRA).<sup>3</sup> Through the CFTRA, reporting of transactions with a financial institution greater than \$10,000 is required, in addition to suspicious activity. The Suppression of the Financing of Terrorism Convention Implementation Act, regardless of territory, makes it a crime for United States citizens, or people acting within United States territories to financially support terrorist activity.<sup>4</sup> The Intelligence Reform and Terrorism Prevention Act of 2004 seeks to regulate certain transactions between financial institutions operating internationally through the United States Treasury Department.<sup>5</sup> Under Executive Order 13224, the Treasury Secretary, in times of national emergencies, is tasked with using all resources available under the International Emergency Economic Powers Act to freeze assets associated with terrorism.<sup>6</sup> The Treasury Department's Terrorist Financing Tracking Program (TFTP) is the unit within the Treasury that enforces these actions.

While these enhancements add value to the anti-terrorist financing apparatus, the impact and scope of the Patriot Act is pronounced. The Patriot Act is the countries foremost roadmap for contemporary national security strategy, and its global impact is a relevant metric to consider. Section II of this paper will focus on the international impact

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<sup>3</sup> Murphy, Maureen M., and Elsea, Jennifer K., "CRS Report for Congress: Treasury's Terrorist Finance Program's Access to information Held by the Society for Worldwide Interbank Financial Telecommunication," Congressional Research Service (2006): 4.

<sup>4</sup> Murphy, Maureen M., and Elsea, Jennifer K., "CRS Report for Congress: Treasury's Terrorist Finance Program's Access to information Held by the Society for Worldwide Interbank Financial Telecommunication," Congressional Research Service (2006): 4.

<sup>5</sup> Murphy, Maureen M., and Elsea, Jennifer K., "CRS Report for Congress: Treasury's Terrorist Finance Program's Access to information Held by the Society for Worldwide Interbank Financial Telecommunication," Congressional Research Service (2006): 5.



of Title III of the Patriot Act. Specifically, Title III of the Patriot Act squarely addresses issues posed by international money laundering with a focus on anti-terrorist financing.

Al Qaeda is a multinational organization operating in an estimated 100 countries.<sup>7</sup> Al Qaeda's influence, demonstrated through their former affiliate and current violent offspring, the Islamic State of Iraq and Syria (ISIS), is proof positive in Al Qaeda's continued presence on the global violent extremist stage since the 9/11 attacks. As the terrorist threat to national security evolves, so should efforts to address the threat. Al Qaeda's methods for generating capital are diverse and span across the global divide with command and control efforts located outside of the continental United States. The nature of the 9/11 attacks, financed through Pakistan, masterminded in Afghanistan with actors primarily from Saudi Arabia that were residing in Germany, and ultimately executed in the United States, had overt global roots.

This paper will specifically address the foreign anti-terrorist financing component of the Patriot Act. By looking at the contemporary means by which terrorists generate income, the international safeguards implemented after 9/11 to address the threat, and the Patriot Act's particular role in influencing those international safeguards, Section II will draw a conclusion on the Patriot Act's international influence and subsequent impact on combating terrorist financing.

While Section I addresses the domestic approach in the Patriot Act to create transparency within formal financial institutions to combat terrorist financing, Section III will discuss the steps taken to enforce informal networks. A major concern then and a

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<sup>6</sup> Murphy, Maureen M., and Elsea, Jennifer K., "CRS Report for Congress: Treasury's Terrorist Finance Program's Access to information Held by the Society for Worldwide Interbank Financial Telecommunication," Congressional Research Service (2006): 2.

major concern now with respect to countering terrorist financing is the issue of alternative remittance systems, otherwise known as informal value transfer systems (IVTS), or as referred to in the Middle East, hawala. This method of currency transmission is a multi billion-dollar business and a common global practice, much of it legitimate, especially in countries with an underdeveloped financial infrastructure that is vulnerable to terrorist manipulation. In the most basic of senses, IVTS logistics are accomplished in one of two ways. IVTS is accomplished either through underground physical transfers of currency, otherwise known as smuggling, or through networks operating outside of legitimate financial institutions conducting word of mouth value transfers. In this case, there is no physical transfer of currency, and these unregulated markets operate based on the terms agreed upon by the involved parties.

Section III will look into the structural and cultural mechanisms that drive this underground network and their possible link to facilitating terrorist related activities. What kind of threat do these networks pose to the United States? How frequent are these networks used to finance terrorism?

After the September 11, 2001 attacks, a major focus was in the form of transparency. Policy makers sought to find a way to better regulate this informal network. After assessing the connection of this network to terrorist financing and whether it is strong or weak, the paper will address the counter terrorist financing efforts included in the Patriot Act, and whether the provisions have effectively addressed these concerns. It bears mentioning that statistics do not paint an absolute picture due to the fact that much of these networks operate outside of any metric weighing system. By

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<sup>7</sup> “Council on Foreign Relations Al Qaeda Backgrounder,” last updated June 6, 2012, <http://www.cfr.org/terrorist-organizations-and-networks/al-qaeda-k-al-qaida-al-qaida/p9126#p3>

looking at current trends we can address the effectiveness of the regulations, determine best practices, and build on any missteps.

Approximately fourteen years after 9/11, the inspirational leader of Al Qaeda, and the man responsible for the 9/11 attacks, Usama bin Laden, is dead. Due to a persistent offensive, Al Qaeda has since fragmented and diminished in size and operational scope. From an inspirational standpoint, the current leader of Al'Qaeda, Ayman al-Zahwahiri, does not command the cult-like loyalty Bin Laden once did.<sup>8</sup> But despite the significant strides taken to degrade the terrorist organization, the threat remains. As a result of the disruption and dismantlement of Al Qaeda, the organization has become decentralized. The organizational structure of Al Qaeda represents more of a stovepipe network of loosely affiliated terrorist cells that span across the Middle East, North Africa, and Asia. This structure will almost certainly impact Al Qaeda's efforts moving forward.<sup>9</sup> The evolution of the terrorist threat exemplified by the rise of ISIS is a stark reminder that the threat is ever-evolving. Not to mention the disturbing trend of homegrown terrorist sympathizers, who have become increasingly emboldened and inspired. Both of these pose a direct threat to domestic security. These terrorist networks rely on the chaos and instability of volatile countries as an operational safe haven. The instability in the Middle East, most specifically in Syria, Iraq and Yemen, coupled with the trend in the unorganized terrorist structure signifies an evolution of the threat, and further demonstrates an adaptability to adapt and thrive. As the threat continues to evolve, the constant that perpetually remains is funding. As the 9/11 attacks have shown us, our

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<sup>8</sup> Senate Select Committee on Intelligence, "James R. Clapper Unclassified Statement for the Record on the Worldwide Threat Assessment of the US Intelligence Community," the Senate Select Committee on Intelligence, January 31, 2012: 3.

country was exposed to a non-state actor bent on overthrowing the US government.

Paying close attention to the utility of the resources in place to counter the threat is an essential exercise.

As the former deputy chief of the Counterterrorist Center within the CIA, Paul Pillar states that “during periods of high interest in terrorism, there is a push to do more of everything - more sanctions, more stringent requirements, heavier criminal penalties, wider application of existing rules - to satisfy a general desire to do more to fight terrorism, even if some of the measures adopted might not be well designed to reduce terrorism.”<sup>10</sup> A review of the financial provisions of the Patriot Act will yield results with respect to this very notion.

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<sup>9</sup> Office of the President of the United States of America, “National Strategy for Counterterrorism,” June 2011: 12.

<sup>10</sup> Pillar, Paul, “Terrorism and U.S. Foreign Policy,” (Washington, DC: The Brookings Institute, 2003): 205.

## **Section I: Public-Private Partnerships**

### **Nature of the Threat:**

In order to track the threat it's important to understand the threat. Like any enterprise, raising capital provides material support and the means to survive and operate. This is no different for terrorist organizations. In order to raise money, terrorists seek funding through various outlets. Al Qaeda solicits funds through donors who relate with their cause, whether it is through a charity or legitimate business. In addition, funding is pursued through criminal endeavors such as kidnapping for ransom; drug trafficking, extortion, credit card fraud, counterfeiting, and smuggling.<sup>11</sup> Once requisite funding streams are established, the next step in the process is effectively distributing the funds to pay for terrorist activity. With respect to circulating funds, terrorists have used wire transfers, debit cards, or cash couriers, in addition to commodities and falsifying documents in order to move funds discreetly.<sup>12</sup> Another trend popular in the Middle East is an informal banking system otherwise known as "hawala". These word of mouth, and essentially paperless transactions are based on familial and tribal connections, and pose a particularly difficult problem, a nuanced and ambiguous form of operations part and parcel to terrorist activity.<sup>13</sup> The flexibility, creativity, and adaptability of terrorists are evidenced through the different attacks and attempted attacks. Whether it be through hijacking a plane, setting off bombs, or mailing bombs, it is clear that the end result of destruction is the guiding force, no matter what. Such seems to be the case as evidenced

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<sup>11</sup> The Office of the President of the United States of America, "National Strategy for Combating Terrorism," September 2006:12.

<sup>12</sup> Financial Crimes Enforcement Network, "Annual Report," 2005: 55.

by the diverse fundraising efforts. As long as there is money coming in, the means in which it comes in does not seem to matter. An ever-evolving and dynamic threat, financing strategies can change from one day to the next. The 9/11 attacks spurred action and the creation of contemporary policies to breakdown terrorist funding networks.

### **Financing 9/11:**

As the 9/11 commission revealed, the financing of the 9/11 terrorist attacks for all intents and purposes went undetected. Before 9/11 much of the government's efforts to combat money laundering were focused on drug trafficking and large financial fraud incidents.<sup>14</sup> For that reason, the 9/11 organizers were able to blend into the global financial system without raising any concerns. The 9/11 attacks acted as a catalyst on many different levels as the country was quickly exposed to a new threat. Al Qaeda was successful in funding their objectives in secrecy within the global financial network.

The funding of the 9/11 attacks stemmed from donors and fundraisers in the Middle East, particularly Saudi Arabia.<sup>15</sup> Al Qaeda relied on charitable organizations and donations (zakat), a religious requirement, in order to finance their operation. Charities not only provided a funding stream but also provided cover with charitable organizations operating as a front under the humanitarian umbrella.<sup>16</sup> All funding stemmed from foreign organizations; no domestic groups were tied to the attacks.

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<sup>13</sup> Financial Crimes Enforcement Network, "Annual Report," 2005: 55.

<sup>14</sup> The National Commission on Terrorist Attacks Upon the United States, "the 9/11 Commission Report," October 17, 2004: 171.

<sup>15</sup> The National Commission on Terrorist Attacks Upon the United States, "the 9/11 Commission Report," October 17, 2004: 171.

<sup>16</sup> The National Commission on Terrorist Attacks Upon the United States, "the 9/11 Commission Report," October 17, 2004: 171.

After the money had been raised, the operational financing was set in motion. In order to finance the attack, terrorists moved money between U.S. and foreign accounts primarily through wire transfers, deposits of cash or traveler's cheques, and debit and credit cards linked to foreign accounts.<sup>17</sup> Of the \$400,000-500,000 used for the attack, approximately \$300,000 moved freely, and legally, throughout the hijacker's established U.S. bank accounts.<sup>18</sup> The unassuming nature in which this money was used enabled the 9/11 attackers to blend into the global network as money was spent on cost of living expenses to include flight school training, travel, rent, food, and various other innocuous expenditures.<sup>19</sup> As a result of the oversight infrastructure in place, the government response was reactive, and thus ill prepared to flag the activity as suspicious. Additionally, the small amount of money it took to commit such an attack coupled with the ease in which that money moved in and out of financial institutions posed an immediate concern and spurred quick executive action in the wake of the attacks.

### **Government Response:**

The immediate response following the 9/11 attacks was robust. The government acted quickly to freeze questionable assets and terrorist funding streams. In response to the attacks, President Bush issued Executive Order 13224 on September 23, 2001. This move enabled the Treasury Department to use necessary measures to track down financiers of terrorism. Within the Treasury, the Terrorist Financing Tracking Program

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<sup>17</sup> The National Commission on Terrorist Attacks Upon the United States, "Terrorist Financing Staff Monograph", August 21, 2004: 6.

<sup>18</sup> The National Commission on Terrorist Attacks Upon the United States, "Terrorist Financing Staff Monograph," August 21, 2004: 6.

<sup>19</sup> The National Commission on Terrorist Attacks Upon the United States, "the 9/11 Commission Report," October 17, 2004: 170.

was established to lead the fight in tracking terrorist financing and breaking up the financial networks that funded such activity. This order launched a multi-lateral response, pulling from both foreign and domestic resources to effectively track, dismantle, and name terrorists and organizations. Under this directive \$200 million worth of assets was seized or frozen.<sup>20</sup> As predicted, the money led to names and organizations that directly or indirectly financed terrorist activity. This critical paper trail was the starting point in creating a black list of individuals and organizations involved in terrorist financing. The individuals and organizations listed faced asset forfeiture and blockage, a tool utilized to freeze assets in the immediate months after 9/11. In responding to the global threat, the United States along with international support motivated quickly to track the money. Piggybacking on the success of Executive Order 13224 was the Patriot Act, which sought to further the reach of the government in tracking down and drying up terrorist financing.

### **Patriot Act Financial Provisions:**

The Patriot Act was passed with little opposition on October 26, 2001. A legislative phenomena with respect to the immediacy in which it was passed, the Patriot Act was the major legislative action taken in response to the 9/11 attacks. Title III of the Patriot Act, The International Money laundering Abatement and Anti-Terrorist Financing Act of 2001, was the major financial overhaul within the act. These measures established several amendments to the Bank Secrecy Act, in addition to new rules to enhance the Treasury Department's capabilities to track illicit funds. The major domestic objective of

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<sup>20</sup> House Subcommittee on Oversight and Investigations, "Patriot Act Oversight: Investigating Patterns of Terrorist Financing," February 12, 2002: 4.



Title III was to create a public-private system for reporting and investigating activity that could yield results in the fight against terrorist financing. In doing so, Title III exemplified a significant step in oversight responsibilities by the government, in addition to expanded responsibilities for domestic financial institutions. Within Title III, several particular sections directly affect the public-private partnership established within the law.

In complying with the Patriot Act, domestic financial institutions are most affected by sections 312, 314, 356, and 363 under Title III of the Patriot Act. Section 312 mandates the establishment of a system for private banks to detect and report money-laundering transactions.<sup>21</sup> This means that financial institutions need to create or build upon their existing reporting apparatus in order to meet Patriot Act requirements.

Section 314 empowers the Secretary of the Treasury to establish policies and guidelines for financial institutions and law enforcement to share information about terrorist financing.<sup>22</sup> In establishing these new procedures, this section seeks to facilitate greater access to information for financial institutions and law enforcement alike in order to track suspicious activity that could be linked to terrorist financing. For financial institutions, that means greater analysis and reports from the government regarding terrorist financing trends. For the government, it means greater access to private sector information in the name of national security.

Section 356 requires the Treasury to keep financial institutions up to date with the regulations, in addition to requirements to share information gathered with respective

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<sup>21</sup> The USA Patriot Act, P.L. 107-56, 107<sup>th</sup> Congress, October 26, 2001: 26.

<sup>22</sup> The USA Patriot Act, P.L. 107-56, 107<sup>th</sup> Congress, October 26, 2001: 37.

agencies within the intelligence community.<sup>23</sup> With the new law it's important for business to understand how they are affected year in and year out. It is the Treasury's responsibility to take the lead in providing this transparency.

To encourage compliance, section 363 of the law increases noncompliance civil penalties and fines to \$1,000,000, up from \$10,000 and \$250,000 respectively.<sup>24</sup>

Section 366 requires the Treasury to report to Congress on the expansion of currency transaction reporting, and in doing so provide a method for minimizing the submission of these reports that provide little utility to law enforcement.<sup>25</sup> As each section reflects, the Patriot Act requires great participation. In carrying out most of the responsibilities by the government, the Treasury Department shoulders the burden.

The lead government agency tasked with overseeing financial activities with respect to terrorist financing is the Financial Crimes Enforcement Network (FinCEN), housed within the Treasury Department. In functioning as the main anti-terrorist financing body, the FinCEN is the lead public agency conveying the Patriot Act message to the private sector. As Table 1 shows, the dramatic increase in FinCEN's post-9/11 budget reflects the added responsibilities and enhanced capabilities on the Treasury Department to manage this public/private partnership.

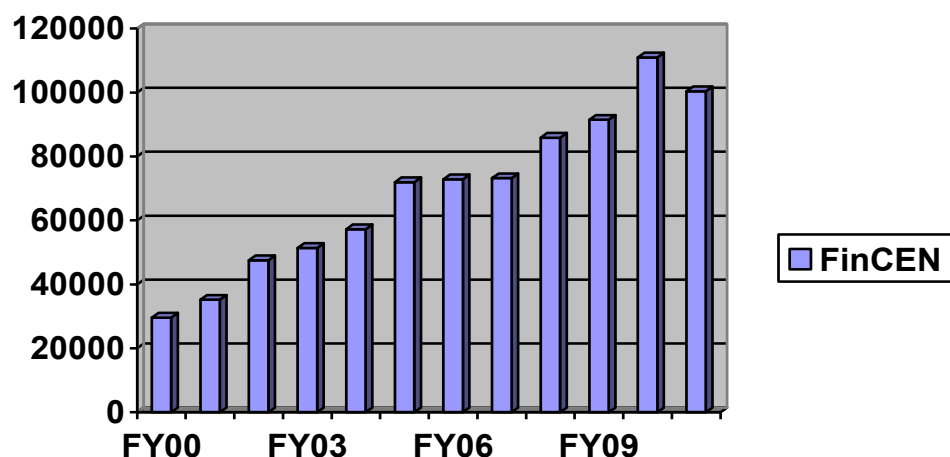
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<sup>23</sup> The USA Patriot Act, P.L. 107-56, 107<sup>th</sup> Congress, October 26, 2001: 3.

<sup>24</sup> The USA Patriot Act, P.L. 107-56, 107<sup>th</sup> Congress, October 26, 2001: 3.

<sup>25</sup> The USA Patriot Act, P.L. 107-56, 107<sup>th</sup> Congress, October 26, 2001: 3.

Table 1. **FinCEN Budget<sup>26</sup> (Millions)**



Since the enactment of anti-money laundering programs to address terrorist financing in 2002, FinCEN’s budget has increased from \$51 million in fiscal year 2003 to over 150 million in fiscal year 2014. With respect to manpower, FinCEN’s staff has progressively expanded since 2001. This increase in budget and workforce after 9/11 suggests a concerted investment in tracking terrorist financing, as evidenced by President Bush’s declaration of financial war on terror at FinCEN.<sup>27</sup> Since 9/11, breaking up terrorist financing has been a vital interest of FinCEN. The pursuit to combat terrorism is a top priority for FinCEN, as depicted by FinCEN’s strategic report from 2008-2012. In the report, two out of the three major initiatives center on anti-terrorist financing. The first strategic goal of FinCEN is to fortify financial institutions against abuse by terrorists, and the second is to focus on deterrence and detection of terrorist financing.<sup>28</sup> In efforts to accomplish these goals, FinCEN relies heavily on the private sector with respect to

<sup>26</sup> Financial Crimes Enforcement Network, “Annual Report,” 2000-2014.

<sup>27</sup> Financial Crimes Enforcement Network, “BSA Timeline 1970-Present,” 2007: 1

information sharing. FinCEN is tasked with communication and enforcement of Patriot Act regulations, while businesses report activity through anti-money laundering programs (AML). In tracking terrorist financing, the Treasury Department under the Patriot Act has dutifully brought the private sector into the fold.

### **Effect on Financial Institutions:**

The main added responsibility of the private sector under the Patriot Act is in reporting. Provisions in the Patriot Act set strict rules for compliance in reporting suspicious activity and increased information sharing with law enforcement. Reporting activity comes in the form of two major reports, suspicious activity reports (SAR), and currency transaction reports (CTR). In its purest form, the Patriot Act promotes information sharing and coordination with government agencies. In filing both SARs and CTRs the government has amassed a database of information that can be used as an investigative tool for law enforcement when pursuing terrorist financing.

With respect to reporting information, financial services file SARs. The SAR, a tool used to provide a uniform report was created as a part of the Annunzio-Wylie Anti-Money Laundering Act. Under the law, financial institutions are required to flag suspicious activity.<sup>29</sup> At its inception in 1996, the main intent of SAR reporting was to connect the public to the private and offer a streamlined database for federal investigators to review information and build cases against money launderers. After the 9/11 attacks, the Patriot Act expanded the role of the SAR from providing not only money laundering information but also intelligence information in hopes of tracking finances linked to

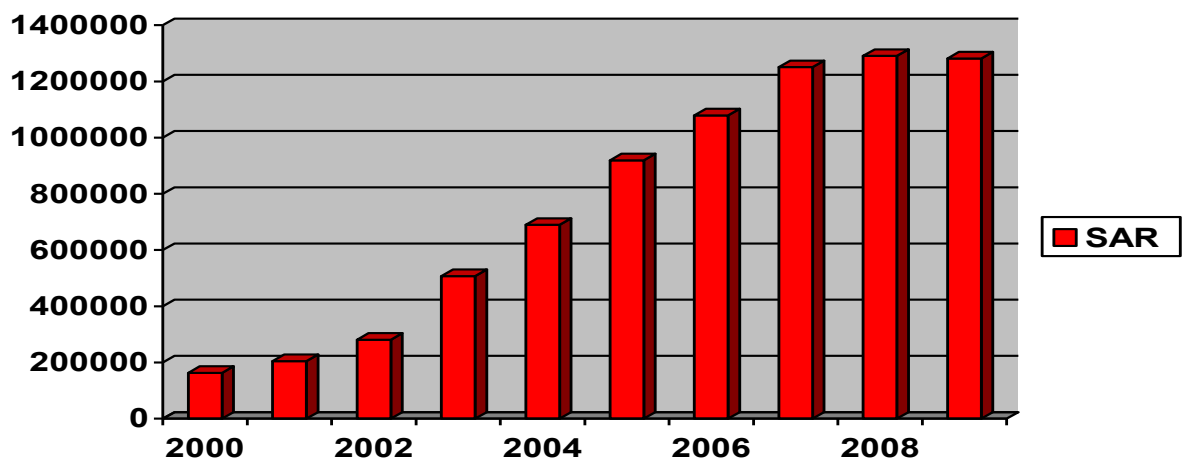
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<sup>28</sup> Financial Crimes Enforcement Network, "FinCEN Strategic Plan," 2008-2012: 8.

terrorist activity.<sup>30</sup> In addition to expanding SAR responsibilities, more financial institutions were included under stricter SAR filing requirements under the Patriot Act.

SARs come in four different forms, SAR-C, SAR-MSB, SAR-DI (TD F 90-22.47), and SAR SF. As reflected by the FinCEN website, the SAR form most requested is the SAR-DI, or the Suspicious Activity Report for Depository Institutions. This report is a five-page form that requests general financial institution information, general suspect information, suspect activity, and a detailed description section to justify the report. In lieu of paper copies, financial institutions have the option to file SARs electronically. The SAR form, a work in progress, has changed over eight times since 2007.<sup>31</sup> Table 2 displays the number of SARs filed between 2000 and July 2014.

Table 2. SAR Reports Filed<sup>32</sup>



<sup>29</sup>Financial Crimes Enforcement Network, History of Anti-Money Laundering Laws: Annunzio-Wylie Anti-Money Laundering Act (1992): 1.

<sup>30</sup> Business Executives for National Security, “Recommendations for Improving the Suspicious Activity Report,” April 11, 2003: 5.

<sup>31</sup> Department of Treasury, “General Specifications for Electronic Filing of Bank Secrecy Act Reports,” July 2010: iv.

As the chart displays, the added SAR requirements and the increase in institutions filing has greatly increased the number of reports filed within FinCEN. From 1996 through 2001 the number of total SARs filed was 729,833.<sup>33</sup> As reflected by Table 2 the number of SARS filed during 2013 alone was 1,640,391<sup>34</sup>, over a seven fold increase since 2000. In complying with the Patriot Act, the influx in reporting suggests in a more proactive approach in reporting suspicious activity by financial institutions. The Treasury Department, as mandated by law, has proactively established the guidelines with which to work, and also has the added the leverage of increased fines for noncompliance from financial institutions.

In addition to SAR filing, the Patriot Act expanded the role of CTRs. Title 366 of the Patriot Act directs the Treasury to study the expansion of the current CTR system and report to Congress with respect to a path forward.<sup>35</sup> CTRs come in two different forms: CTR 104 and CTR-C 103. As reflected by the FinCEN website, the most frequently requested CTR is the standard form 104. The CTR 104 is a four-page form that requests information regarding the person involved in the transaction, the amount and type of transaction, and information regarding the institution where the transaction took place. As depicted in Table 3, CTR reporting has experienced an increase in reporting since 2002. Although not as dramatic as the increase in SAR reporting, the data does reveal a steady trend as reporting has increased from approximately 12 million filed in 2001 to nearly 16 million at its peak in 2008.

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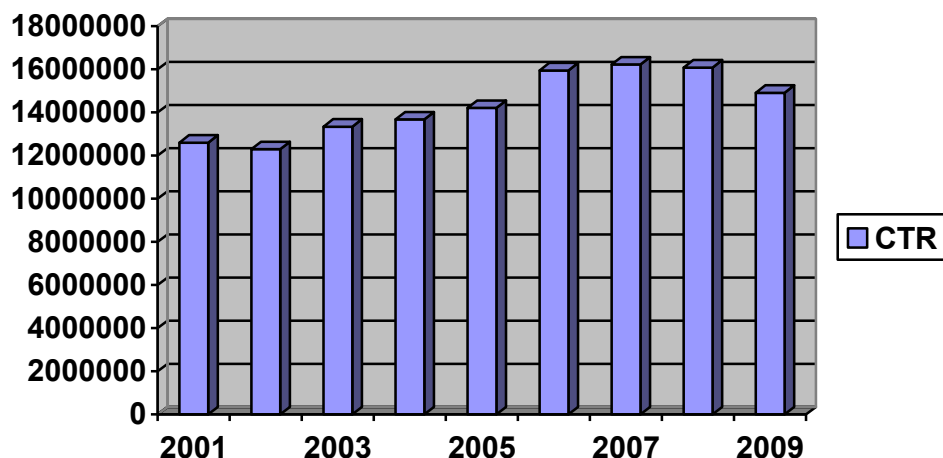
<sup>32</sup> Financial Crimes Enforcement Network, "SAR Activity Review-By the Numbers," June 2010, No 14: 4.

<sup>33</sup> Financial Crimes Enforcement Network, "SAR Activity Review-By the Numbers," January 2010, No 13: 4.

<sup>34</sup> Financial Crimes Enforcement Network, "SAR Activity Review-By the Numbers," January 2010, No 13: 4.

<sup>35</sup> The USA Patriot Act, P.L. 107-56, 107<sup>th</sup> Congress, October 26, 2001: 3.

Table 3: CTR Reports Filed<sup>36</sup>



As discussed above, the increase in reporting of both SARs and CTRs can be attributed to the increase in financial institutions reporting data, in addition to an increase in the criteria of data to report. SAR and CTR reporting represents a serious commitment of time and resources in reporting, storing, and interpreting information. The major effects on business are that of workforce, and cost. With respect to workforce, financial institutions must hire employees to manage the operation and track suspicious activity. A 2008 Wake Forest Law review estimated the amount of time financial institutions devoted to filing SARs and CTRs by calculating FinCEN's estimate of 25 minutes per report by the amount of reports filed in a year. In 2001 the estimated staff hours devoted to SAR filing was 84,807 hours.<sup>37</sup> In 2006, that number increased to 236,283 staff

<sup>36</sup> Financial Crimes Enforcement Network, "Annual Report," 2000-2011.

<sup>37</sup> Wake Forest Law Review, The Burden of Currency Transaction Reporting on Deposit Institutions and the Need for Regulatory Relief, W09-Parrish V. 2, Vol. 43, June 28, 2008:575.

hours.<sup>38</sup> In 2001 the estimated staff hours devoted to CTR filing was 5,249,999.<sup>39</sup> In 2006, the number increased to 6,664,367.<sup>40</sup>

Regarding cost, financial institutions from small to large all fall under the Patriot Act compliance umbrella. Flagging suspicious activity takes a great amount of time and resources. Some reports have tagged the cost of financial institutions to comply with the Patriot Act at \$7 billion a year.<sup>41</sup> The burden to cover these costs is not shouldered by financial institutions alone as estimates suggest that financial institutions pass some costs onto consumers of bank services at a cost of approximately 1 billion dollars annually.<sup>42</sup>

As statistics suggest, monitoring, and reporting activity requires tremendous resources and manpower. In the name of anti-terrorist financing, Title III of the Patriot Act increased reporting requirements by the private sector and oversight responsibility by the government. As the data reveals, the Patriot Act has been successful in amassing a database of financial transactions and fostering greater transparency between the public and private sector. In looking at its effect in uncovering terrorist financing we can determine whether the increase in responsibilities has lead to useful information in building cases.

## **Results:**

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<sup>38</sup> Wake Forest Law Review, The Burden of Currency Transaction Reporting on Deposit Institutions and the Need for Regulatory Relief, W09-Parrish V. 2, Vol. 43, June 28, 2008:575.

<sup>39</sup> Wake Forest Law Review, The Burden of Currency Transaction Reporting on Deposit Institutions and the Need for Regulatory Relief, W09-Parrish V. 2, Vol. 43, June 28, 2008:575.

<sup>40</sup> Wake Forest Law Review, The Burden of Currency Transaction Reporting on Deposit Institutions and the Need for Regulatory Relief, W09-Parrish V. 2, Vol. 43, June 28, 2008:575.

<sup>41</sup> Suspicious Activity Hearing, *supra* note 5, at 53 (statement of Steve Bartlett, Financial Services Roundtable).

<sup>42</sup> Suspicious Activity Hearing, *supra* note 5, at 53 (statement of Steve Bartlett, Financial Services Roundtable).



In looking at the number of reports pegged to terrorist financing, one must determine whether or not the outcome outweighs the effort. The steady uptick in reporting can be directly attributed to the enhanced compliance provisions inherent within the Patriot Act as Section 314 requires the Treasury to reach out to financial institutions in pursuit of information regarding terrorist financing.<sup>43</sup> As of November 10, 2014 the 314(a) Program Office has processed 2,342 requests with respect to “significant” criminal investigations. Of those requests, 455 were related to terrorist financing.<sup>44</sup> Furthermore, the link in those 455 requests to Al Qaeda, its affiliates, and emerging threats like ISIS is ambiguous.

An unintended pitfall of the Patriot Act is the trend of “defensive SAR” filing. Because of the strict penalties for non-compliance, financial institutions have erred on the side of caution. To safeguard against noncompliance there is a trend towards defensive SAR filing. These are instances in which banks file excessive reports to hedge against the possibility of a penalty. This creates more paperwork for the private, public sector, and law enforcement alike.

CTRs alone average 15 million reports filed annually through FinCEN.<sup>45</sup> According to FinCEN statistics it takes approximately 25 minutes to report and file the average CTR.<sup>46</sup> This equates to over 6 million staff hours devoted to CTR reporting by financial institutions.<sup>47</sup> This represents a major commitment and the argument can be made that these obligations stretch both the government and private sector thin. The cost

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<sup>43</sup> Financial Crimes Enforcement Network, “FinCEN’s 314 (a) Fact Sheet,” November 16, 2010: 1.

<sup>44</sup> Financial Crimes Enforcement Network, “FinCEN’s 314 (a) Fact Sheet,” November 16, 2010: 3.

<sup>45</sup> Subcommittee on Oversight and Investigations, 2007, “Testimony of Megan Davis Hodge, American Bankers Association,” May 10, 2007: 8.

<sup>46</sup> Subcommittee on Oversight and Investigations, 2007, “Testimony of Megan Davis Hodge, American Bankers Association,” May 10, 2007: 8.

to report these transactions and subsequently vet them does not appear to reveal significant intelligence that links these reports to terrorist financing networks. In over filing SAR and CTR reports both business and law enforcement experience an overabundance in defensive filing, only adding to the difficulty in uncovering actionable intelligence.

While well intended, these laws were passed to cast a sharper eye on the financial system. In tracking terrorist financing however, the results have been inconclusive. As a stand alone tool to combat terrorist financing, the Patriot Act provisions have added misguided layers to reporting requirements, and based on the volume of additional SARs and CTRs measured against the intelligence gleaned regarding terrorist financing, the results do not reveal a robust effort by terrorist networks to exploit legitimate U.S. financial institutions.

As previously discussed, the currency that moved through U.S. financial institutions prior to the 9/11 attack went undetected. If the modern day system, driven by the Patriot Act provisions, were a catchall and successfully targeted bank accounts in question, the transactions would be memorialized through SARs and CTRs. That information would be available to access by law enforcement, but it would not necessarily prompt an investigation or even a review. In these instances access does not always necessitate action. Without any other triggers directing law enforcement to the accounts, the SARs and CTRs could remain idle and allow for continued exploitation. This formula would put U.S. national security in a reactive posture, which is counter to the objective.

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<sup>47</sup> Subcommittee on Oversight and Investigations, 2007, “Testimony of Megan Davis Hodge, American Bankers Association,” May 10, 2007: 8.

A March 24, 2015 release of 9/11 Review Commissions report on the Federal Bureau of Investigation (FBI) - Protecting the Homeland in the 21<sup>st</sup> Century - was a revealing assessment of the FBI's strategies, and successes and failures in addressing the Bureau's top priority: protect the United States from terrorist attack.<sup>48</sup> In reviewing the Bureau's actions taken since 9/11, the commission reviewed a sample of five cases to measure investigative trends. The tools most exercised through the Patriot Act were under the enhancements to the Foreign Intelligence Surveillance Act and were deemed essential by the commission in each investigation.<sup>49</sup> Of the strides taken to enhance the nations intelligence capabilities, tracking terrorist financing appears to be a reactive measure.

The Patriot Act is successful in creating a partnership between the public and private sector as exemplified by the increase in communication and coordination but the concern arises when the private sector is stretched thin in reporting information, especially when few results have yielded information with respect to terrorist financing sources. The costs to comply with the law are simply too high. Statistics suggest that in 2005 brokerage firms alone spent \$700 million to comply with the Patriot Act.<sup>50</sup>

A double-edge sword, the broad interpretation of counter terrorist strategy brings in money and resources in order for government agencies to accomplish a goal. While funding in the name of counterterrorism is robust, the strategy and results may not be effective in accomplishing their objectives of tracking down terrorist organizations. As the numbers suggest, the strategy set forth by the Patriot Act represent a sizable increase

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<sup>48</sup> The Federal Bureau of Investigation, "Quick Facts," <http://www.fbi.gov/about-us/quick-facts>.

<sup>49</sup> 9/11 Review Commission, "The FBI: Protecting the Homeland in the 21<sup>st</sup> Century," March 2015: 39.

<sup>50</sup> Towergroup, "Pay Now or Pay Later: Anti-Money Laundering Programs Offer Road Map for US Funds Transfer Compliance," January 17, 2005.

in responsibilities for both the public and private sector. Intuition would suggest that more resources devoted to a mission would yield greater results, but this is not the case. The current financial provisions have proven unimpressive in tracking down terrorist financing since 9/11. This undertaking, noble in its intentions, has not yielded many results in the fight against terrorist financing. Of the \$200 million terrorist assets seized, 80 percent of the assets were frozen within the first three months of the attack.<sup>51</sup> Of that \$200 million, roughly 34 million was directly frozen in the U.S.<sup>52</sup> This trend can mainly be attributed to Executive Order 13224 in the immediate weeks after the 9/11 attacks. This suggests that either terrorist financing has dried up or that alternate funding streams are being used as terrorists have adapted and readjusted accordingly. The latter seems more practical as attempted attacks post 9/11 have proven that the threat posed by terrorism is still very real. A more targeted and strategic approach needs to be adopted in order to best utilize both public and private resources. The results have shown that the response to the Patriot Act by the government and private sector alike was robust. SAR and CTR reporting increased exponentially and financial institutions complied whether they wanted to or not. But in the effort to track terrorist financing, much of the information provided has not proven helpful as other methods and financing avenues have been pursued. As evidenced through the 9/11 attacks and the government response in tracking down financing after the attack, the majority of financing activities have occurred abroad. While the Patriot Act changed a lot of rules to play by domestically, it's effect ripples far across the international divide. In determining best practices,

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<sup>51</sup> House Subcommittee on Oversight and Investigations, "Patriot Act Oversight: Investigating Patterns of Terrorist Financing," February 12, 2002: 8.

<sup>52</sup> Bell, Jennifer Lynn, "Terrorist Abuse of Non-profits and Charities: A Proactive Approach to Preventing Terrorist Financing, Kansas Journal of Law and Public Policy," Vol. XVII: 3, June 6, 2008: 451.

international partnerships are essential in the fight against terrorist financing and must play a role. In a departure from the domestic effect, the international effect of the Patriot Act may tell a different story in the hunt for terrorist financing.

## **Section II: International Partnerships**

### **Immediate Action:**

Immediately following the 9/11 attacks was a short-term reactive response focused primarily on military efforts. Long-term needs, such as tracking where the money came from, were of peripheral interest. After the proverbial dust had settled, the President tasked the Treasury Secretary at the time, Paul O'Neill, with putting forth a strategy for targeting and freezing Al Qaeda's assets. On September 18, 2001, members of the National Security Council began discussing next steps.<sup>53</sup> The ensuing days and weeks after the 9/11 attacks revealed a large foreign terrorist nexus.

The funding structure of Al Qaeda is multi-faceted, Al Qaeda seeks funding through multiple avenues charities, front companies, smuggling, fraud, and banking connections in the Middle East.<sup>54</sup> Under the September 23, 2001 Executive Order 13224, The United States froze assets of suspected terrorist financiers. Paralleling the unilateral response by the United States was a multi-lateral effort by way of the European Union, and United Nations Resolutions.<sup>55</sup> Through these international entities, individuals were arrested and assets were frozen in Belgium, France, Italy, Germany, Spain, and the United Kingdom.<sup>56</sup> Through the deliberate tracing of money, central Al Qaeda financiers were identified and in many cases the threat was mitigated either through death, capture,

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<sup>53</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 350.

<sup>54</sup> Pearl, Raphael F., "International Terrorism: Threat, Policy, Response," Congressional Research Service (2007): 7.

<sup>55</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 398.

<sup>56</sup> Archik, Kristin, "U.S.-EU Cooperation Against Terrorism," Congressional Research Service (2012): 4.

and attrition by enhanced scrutiny and sanctions.<sup>57</sup> These efforts resulted in stunting funds to Al Qaeda in the short term, but long-term objectives needed to be a priority. Following Executive Order 13224, the roots of a more protracted approach took hold. On October 26, 2001, after taking a step back and internalizing the threat, the Patriot Act was unanimously adopted.

### **Title III:**

In 2001, an International Monetary Fund estimate pegged illegal proceeds equal to approximately 5 percent of global Gross Domestic Product (GDP).<sup>58</sup> This flow of ill-gotten gains within the global system, to include terrorist financing, was of particular concern to lawmakers when crafting the Patriot Act. Title III of the Patriot Act captures the financial actions associated with the law. The various authorities authorized under Title III calls for advanced oversight capabilities, multilateral cooperation, due diligence requirements for banks associated with foreign clients, asset forfeiture of banks dealing with suspicious foreign entities, and increases in penalties for international money laundering violations associated with any U.S. banks.

In taking a proactive approach to combating suspicious activity, Section 311 enables the Treasury Secretary to utilize “special measures” against any foreign financial entity that poses a particular money laundering concern. Section 311 aims to add value to previous anti-money laundering measures by creating a middle ground review process to determine the nature of suspicious activity.

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<sup>57</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 399.

<sup>58</sup> The USA Patriot Act, P.L. 107-56, 107<sup>th</sup> Congress, October 26, 2001: 26.

Under Title III, the Secretary of the Treasury is given oversight authority over foreign financial institution with a domestic nexus. Particularly, Sections 312, 313, 317, 318, 319, and 377 seek to enhance the Treasury Department's reach abroad. Section 312 requires financial institutions to enact special due diligence requirements to track suspicious activity that could be tied to terrorist financing. Under the Treasury's guidance with respect to best practices, financial institutions have obligations to monitor both domestic and international customers and accounts that involve their respective financial institutions. Section 313 focuses on shell banks that did not previously have to comply with regulation requirements. Under the Patriot Act, the aim is to enforce greater compliance and oversight by prohibiting domestic banks from conducting business with any foreign financial institution that does not have a physical footprint in any country.<sup>59</sup> These shell type banks are believed to be at greater risk of money laundering and terrorist financing. Furthermore, "necessary steps" are required to be taken to make sure that the legitimate foreign institutions that domestic banks do conduct business with do not have any accounts associated with shell banks.<sup>60</sup>

Section 317 invokes "long arm" jurisdictional oversight on non-U.S. persons or entities with a U.S. bank nexus. Through legal process, steps can be taken to forfeit assets or freeze accounts believed to be involved in money laundering. To add value to Section 317, Section 318 expands the United States reach to include foreign financial institutions involved in money laundering. Authorities include foreign and domestic forfeiture capabilities, greater jurisdictional reach over foreign persons linked to illegal financial transactions involving domestic financial institutions, increased due diligence

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<sup>59</sup> Financial Crimes Enforcement Network, FinCEN's 311 Fact Sheet, May 28, 2013.

<sup>60</sup> Financial Crimes Enforcement Network, FinCEN's 311 Fact Sheet, May 28, 2013.



and compliance, increase in penalties for money laundering, and greater enforcement on smuggling currency to and from the United States. Additionally, the Patriot Act calls for greater cooperation and partnerships to address antiterrorist financing with a focus on information sharing.

Section 319 expands the Treasury Secretary's reach to foreign institutions by requiring domestic banks to keep certain records on foreign financial institutions with which they conduct business. In the event that illicit funds are located, funds can be seized through legal process.

Section 377 applies domestic prohibitions to foreign entities engaged in financial violations with a connection to a domestic financial institution.

To enhance cooperation and partnerships abroad, there is language in Sections 328 and 330 mandating coordination in efforts to maintain records, and disclose information when appropriate on suspicious wire transfers, and any investigations involving money laundering or terrorist financing.

From an enforcement perspective, Sections 363, 371, and 373 augment the penalties associated with currency related violations. Section 362 increases financial penalties for money laundering. The increase in penalties expanded to include violations of due diligence requirements by foreign financial institutions. Section 371 enhances penalties associated with the bulk smuggling of \$10,000 or more of currency into or out of the United States. Similarly, Section 373 seeks to further define illegal money transmitting business, and imposes penalties for noncompliance.

Regarding the smuggling of currency, Sections 374 and 375 expand the definition of counterfeiting, and increases the penalty for counterfeit related offenses.

If and when the laundering of proceeds associated with terrorist financing is uncovered, Section 376 expands the predicate acts associated with the offense.

In diagnosing the utility of these various provisions, Section 311, is the most exercised provision inherent under Title III. Under S. 311, The Financial Crimes Enforcement Network of The Treasury (FinCEN) review countries and institutions and designate special measures accordingly. The threshold to substantiate any action is that of reasonableness. In other words, if the Treasury Secretary determines a reasonable threat based on an assessment of a particular region or institution of concern, then actions can be taken through FinCEN against an institution that poses a particular money laundering concern. Inherent in Section 311 is language giving the Treasury Secretary Authority to designate a financial institution, or jurisdiction, an entity of particular concern with respect to money laundering. With this designation, not requiring executive approval, sanctions can be placed on these entities. The threshold to act under Section 311 is low. Neither presidential concurrence, nor a terrorist nexus is required; rather a finding of money laundering vulnerabilities is the requirement to be subject to Section 311.<sup>61</sup>

The Section 311 process is fourfold, beginning with an initial finding.<sup>62</sup> When a country or institution is of terrorist financing or money laundering concern, Treasury will review the entity in question. The next step initiates the process of an official proposed rule making. This stage sets in motion the administrative Section 311 process. Upon review, a final rule is proposed whereby the Section 311 order is set in motion. The financial institution remains in the final rule until their standards of monitoring suspicious

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<sup>61</sup> Council on Foreign Relations, “Update on the Global Campaign Against Terrorist Financing,” 2004: 47.

activity are commensurate enough to rescind the Section 311 action. To date, FinCEN has taken action under Section 311 on 22 jurisdictions, and financial institutions combined since 2002.<sup>63</sup>

Of the Section 311 actions taken, there is no information to suggest direct affiliations with Al Qaeda. Rather, the countries and institutions targeted have been determined to have identifiable vulnerabilities and are of general money laundering concern. Of the countries and institutions targeted, half of the Section 311 actions have since been rescinded due to efforts by the targeted institutions to meet particular global standards. Of the Section 311 actions taken from a terrorist financing standpoint, the language in the announcements suggest a general concern that a country or institution may be exploited by terrorist networks. With respect to specific terrorist organizations, the only identified networks affiliated in the Section 311 actions taken are against institutions or jurisdictions with possible ties to Hamas and Hezbollah.<sup>64</sup>

Section 371, with a focus on criminalizing bulk smuggling over \$10,000 have aided in the successful prosecutions of terrorist-related financiers attempting to transfer money into and out of the United States. In the case of Alaa El Saadawi v. The United States, the defendant was suspected of having ties to the Global Relief Foundation, a front charity with alleged ties to Al Qaeda.<sup>65</sup> The defendant attempted to smuggle over 600,000 out of the country and subsequently plead guilty to making false statements to

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<sup>62</sup> “Section 311 Special Measures,” last viewed November 10, 2014, [http://www.fincen.gov/statutes\\_regs/patriot/section311.html](http://www.fincen.gov/statutes_regs/patriot/section311.html)

<sup>63</sup> “Section 311 Special Measures,” last viewed November 10, 2014, [http://www.fincen.gov/statutes\\_regs/patriot/section311.html](http://www.fincen.gov/statutes_regs/patriot/section311.html)

<sup>64</sup> “Section 311 Special Measures,” last viewed November 10, 2014, [http://www.fincen.gov/statutes\\_regs/patriot/section311.html](http://www.fincen.gov/statutes_regs/patriot/section311.html)

<sup>65</sup> “United States of America v. Alaa El Saadawi,” Indictment, case no. 2:07-cr-00560 (2007)

investigators.<sup>66</sup> Forfeiture of the attempted smuggled proceeds under Section 371 is ongoing.

### **Countries of Particular Terrorist Financing Concern:**

As described above, Title III of Patriot Act relies heavily on language to promote greater partnerships and encourage greater cooperation from foreign partners of particular terrorist financing concern. From a national security standpoint, the focal point for violent extremism resides in the Middle East. As such, it is reasonable to infer that much of the focus for cooperation to combat terrorist financing relies on enhanced partnerships in the regions. Since the 9/11 attacks, global financial conduct standards have been promoted through both domestic and international venues. A review of contemporary financial checks of Middle East countries with financial ties to the 9/11 attacks can yield overall results with respect to their efforts to combat terrorist financing.

Saudi Arabia was central to the pre-911 Al Qaeda financial apparatus. Regarding the means to obtain financing, evidence suggests that Al Qaeda utilized charities with deep Saudi ties in order to funnel financial resources to fund Al Qaeda efforts.<sup>67</sup> Relying heavily on the religious call to donate to charity, Al Qaeda was able to secure Saudi financiers regardless as to whether or not they were complicit in knowing where these resources were going.<sup>68</sup> The al Haramain Islamic Foundation, a Saudi based foundation

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<sup>66</sup> “Edison, New Jersey Man Admits Lying To Become A United States Citizen,” United States Department of Justice, Press Release, June 7, 2011.

<sup>67</sup> Prados, Alfred B., and Blanchard, Christopher M., Saudi Arabia: Terrorist Financing Issues,” Congressional Research Service (2005): 5.

<sup>68</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004:187.

with little oversight, was considered a major facilitator for Al Qaeda financing.<sup>69</sup>

Wealthy financiers from other gulf states were reported to have funded Al Qaeda efforts as well.

By nature, it is difficult to track financial activity in the Saudi banking system. In addition to cash transactions taking precedence, income tax is not monitored, and charitable donations, a Muslim obligation, are often donated anonymously and can be funneled to front organizations that are discretely funding a terrorist organization.<sup>70</sup> Saudi Arabia is not only a vulnerable target for moving terrorist financing, it is also a country targeted for extremist activity, as evidenced by terrorist attacks in 2003 and 2004. After the 2003 Al Qaeda related terrorist attacks in Riyadh, Saudi Arabia effectively targeted and diminished Al Qaeda's funding mechanism through charitable donations.<sup>71</sup>

Since the 9/11 attacks, Saudi Arabia has taken steps to further scrutinize financial activity to combat terrorist financing. Of particular note, the Saudi government established several government oversight entities to ensure better banking transparency with a particular focus on monitoring charitable donations. Additionally, Saudi Arabia imposed legal measures to criminalize terrorist financing capabilities to freeze assets in a timely manner.<sup>72</sup>

As Saudi Arabia allowed Al Qaeda to generate and move income through charitable organizations, Afghanistan's banking system, or lack thereof, provided Al Qaeda with the opportunity to utilize hawala due to its weak oversight and scrutiny. Due

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<sup>69</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 187.

<sup>70</sup> Prados, Alfred B., and Blanchard, Christopher M., Saudi Arabia: Terrorist Financing Issues," Congressional Research Service (2005): 4.

<sup>71</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 399-499.

to United Nations (UN) Resolutions focused on Al Qaeda due in part to their 1998 participation in the East Africa embassy bombings, Al Qaeda was wary about the possible scrutiny associated with utilizing more formal networks.<sup>73</sup> Afghanistan, similar to Saudi Arabia, has made commitments to address financial deficiencies through better tracking and of freezing assets, and criminalizing terrorist financing, consistent with global standards.

Similar to Afghanistan, there is little evidence to suggest that formal financial networks were utilized by Al Qaeda in Pakistan to finance the 9/11 attacks. Primarily in Pakistan, currency exchanges relied heavily on established hawala networks and established connections in the Middle East.<sup>74</sup> Given that the organizer of the 9/11 attacks, Khalid Sheikh Mohammed, was primarily based in Pakistan, much of the operational funding was distributed directly from him as the attackers would frequently travel to Pakistan to receive expenses, at times as much as \$10,000.<sup>75</sup> Pakistan has also made efforts to further comply with foreign standards to effectively deter terrorist financing.

Regarding currency that moved through legitimate financial system, there was information to suggest there were several wire transfers to and from Al Qaeda operatives in the United Arab Emirates.<sup>76</sup> After the September 11, 2001 attacks and the revelation

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<sup>72</sup> "A Comparative Assessment of Saudi Arabia with Other Countries of the Islamic World," Watson Institute for International Studies (2004): 8.

<sup>73</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004:188.

<sup>74</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 188.

<sup>75</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 253.

<sup>76</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 269.

that there were financial ties to the Emirates financial network, the United Arab Emirates cooperated aggressively in tracking the illicit funds and terrorist with robust penalties.<sup>77</sup>

Similarly in Qatar, there were financial ties to banks as Al Qaeda affiliated wire transfers revealed proceeds held in Qatari financial institutions following the tracking of the money associated with the 9/11 attacks.<sup>78</sup> In the years following the 9/11 attacks, Qatar's efforts in complying with global anti-terrorist financing standards consistent with UN Resolutions, FATF Recommendations, and language in the Patriot Act have been mixed. Commitments have been made, and acted upon to enhance transparency and create great anti-money laundering and anti-terrorist financing controls, but reports of safe harbor provided to an associate believed to be affiliated with Al Qaeda without any recourse or attempts to freeze assets have been alleged.<sup>79</sup> Most recently, when addressing the threat posed by extremist activity in Syria, information suggests fundraising efforts in support of terrorist activity.<sup>80</sup>

### **Additional Mechanisms:**

The 9/11 attacks exposed U.S. vulnerabilities, but also prompted foreign partners, some of which did not even have anti-terrorist financing legislation, to initiate anti-terrorist financing measures to comply with external pressures from foreign influences such as the Financial Action Task Force (FATF), and the United Nations.<sup>81</sup> With these

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<sup>77</sup> "Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism," International Monetary Fund (2008): 17.

<sup>78</sup> The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, October 17, 2004: 164.

<sup>79</sup> "Anti Money Laundering and Combating the Financing of Terrorism, Qatar," Financial Action Task Force: 51.

<sup>80</sup> Kirkpatrick, David D., "Qatar's Support of Islamists Alienates Allies Near and Far," New York Times, September 7, 2014, Middle East.

<sup>81</sup> Archik, Kristin, "U.S.-EU Cooperation Against Terrorism," Congressional Research Service (2012): 4.

institutions squarely planted as players in the geo-political arena, it is important to address their influence in global anti-terrorist financing efforts.

The FATF, a non-governmental advisory organization, has developed a respect and niche as the standard for global norms for money laundering and terrorist financing. The FATF published a widely regarded set of standards for countries to comply with in order to effectively combat terrorist financing. The FATF's recommendations serve as a roadmap for international standards with government bodies like the UN, which cite FATF recommendations when dealing with anti-terrorist financing policies.<sup>82</sup> Countries praised or condemned by the FATF carry significant weight because of their member body and global influence. Under guidance from FATF from a legal standpoint, Saudi Arabia has adhered to the many standards outlined by FATF. Similarly, the United Arab Emirates (UAE), Afghanistan, Qatar, and Pakistan have all adopted, or pledged to adopt FATF recommendations. The FATF's reach also influences S. 311 designations as guidance is sought by the Treasury to determine the scope of S. 311 actions to take.

From an intelligence perspective, The Egmont Group, a global collective and somewhat of a sister organization to the FATF, relies on information sharing between member countries to enhance anti-terrorist financing initiatives. Additionally, other information sharing initiatives are at play as well. For example, strides have been made through the European Union to promote greater collaboration in meshing national policies to include enhancements in extradition, and improvements in sharing information between law enforcement partners.<sup>83</sup>

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<sup>82</sup> "UN Extends Sanctions Against Al Qaida," United Nations Security Council, Department of Public Information, July 29, 2005: 1.

<sup>83</sup> Archik, Kristin, "U.S.-EU Cooperation Against Terrorism," Congressional Research Service (2012): 2.



Through the UN, several measures have been taken since 9/11 to enhance vigilance in breaking down global terrorist financing networks. Preceding the Patriot Act, UN Resolution 1267 placed sanctions on Al Qaeda and its affiliates, allowing for asset freezes, travel bans, and arms embargos.<sup>84</sup> UN Resolution 167 was instrumental in the targeting and dissolution of the Al Haramain Foundation. UN Resolution 1373, which passed on September 28, 2001, calls for greater information sharing between countries in addition to enhanced capabilities to freeze terrorist related assets expeditiously, and deny refuge to those involved in terrorist acts.<sup>85</sup>

Furthermore, UN Resolution 1617 seeks to narrow the scope of 1373, with a particular focus on Al Qaeda and its affiliates. Additionally, the UN Convention for the Suppression of the Financing of Terrorism, which experienced an uptick in support post 9/11, is an agreement that seeks to criminalize terror related finances, focusing on creating greater vigilance and penalties by member states.<sup>86</sup>

Saudi Arabia and Pakistan signed onto the UN Convention to Suppress the Financing of Terrorism, an initiative to promote greater partnerships and information sharing.<sup>87</sup> As such, Saudi Arabia has acted to freeze terrorist assets, over 5 million since 2003, compared to 10.7 million frozen by Pakistan.<sup>88</sup> Additionally, through UN task forces such as the Middle East and North Africa Financial Action Task Force, middle

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<sup>84</sup> "Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities," last viewed November 10, 2014, <http://www.un.org/sc/committees/1267/>

<sup>85</sup> "Money Laundering and Financial Crimes," Bureau for International Narcotics and Law Enforcement Affairs, Volume II, March, 2005: 45.

<sup>86</sup> "Money Laundering and Financial Crimes," Bureau for International Narcotics and Law Enforcement Affairs, Volume II, March, 2005: 45.

<sup>87</sup> "A Comparative Assessment of Saudi Arabia with Other Countries of the Islamic World," Watson Institute for International Studies (2004): 9.

<sup>88</sup> Appendix III to S/2003/1070, published by the United Nations. Saudi Arabia has reportedly frozen \$5.7m, compared with Pakistan's \$10.7m.

eastern countries of particular concern have taken measures, based on FATF guidance, to track terrorist financing by establishing a government entity to better track charitable giving, close illegitimate informal hawala networks, criminalize terrorist financing, and improved information sharing.

In addition to added responsibilities inherent in the Patriot Act, other mechanisms through the Treasury Department to combat terrorist financing, particularly through the Office of Foreign Assets Control (OFAC), are additional domestic tools to combat terrorist financing. The actions taken under OFAC differ from the measures taken and enforced under S. 311 of the Patriot Act. Regarding S. 311, actions are taken through a procedural process starting with an initial finding, proposing a rule, and an ultimate finding as to whether or not steps are taken against an institution or an entity.<sup>89</sup> Whereby under 311, there is a more observational period where transactions are monitored with greater scrutiny, OFAC has greater authority to take immediate action, such as freezing assets.<sup>90</sup>

Executive Order (EO) 13224 authorized by President Bush on September 23, 2001 enhanced OFAC's responsibilities with respect to tracking terrorist financing. EO 13224 allows for immediate action against a financial institution of primary terrorist financing concern. Apart from Patriot Act provisions, the Treasury Department through OFAC and the Terrorist Finance Tracking Program (TFTP) administer such action.

## **Results:**

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<sup>89</sup> Financial Crimes Enforcement Network, FinCEN's 311 Fact Sheet, May 28, 2013.

<sup>90</sup> Financial Crimes Enforcement Network, FinCEN's 311 Fact Sheet, May 28, 2013.

From a metrics standpoint, there is little information to suggest that the Patriot Act provisions have effectively targeted Al Qaeda affiliated finances. As highlighted above, the most utilized provision under Title III is the special measures provisions under Section 311. Since the laws inception, no Section 311 action has been taken against Al Qaeda affiliated assets. Furthermore, from an enforcement standpoint, the smuggling provisions have provided legal authorities additional tools to charge a defendant, but linking currency smuggled into or out of the country to Al Qaeda affiliated networks has proven to be a difficult notion to prove.

Given the other international mechanisms at play, measuring whether or not a particular country took action based on Patriot Act pressure, or some other international mechanism is difficult to judge. There is information to suggest that efforts, and in turn results, rely heavily on established global organizations that influence greater cooperation and transparency from foreign counterparts. Of the countries reviewed, all have been responsive in some capacity to UN Resolutions 1267 and 1373. Much of the language in the UN resolutions parallel language in Title III of the Patriot Act, but the information suggests that the catalyst to affect change is through these global institutions as opposed to working bilaterally with the United States anti-terrorist policies. Furthermore, even though FATF recommendations have been adopted by countries that present a particular terrorist financing concern, the implementation and enforcement of those recommendations are not easily tracked.<sup>91</sup> On the surface, Qatar has complied with the basic standards outlined by the FATF, but their government infrastructure is targeted by

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<sup>91</sup> Prados, Alfred B., and Blanchard, Christopher M., Saudi Arabia: Terrorist Financing Issues,” Congressional Research Service (2005): 25.

the Treasury Department with respect to financing efforts in Syria.<sup>92</sup> Furthermore, Saudi Arabia has not fully committed to all FATF recommendations and other global anti-terrorist financing standards. For example, Saudi Arabia has yet to sign onto the International Convention for the Suppression of the Financing of Terrorism, which was ratified by the U.N. General Assembly in 1999.<sup>93</sup>

The threat posed by terrorism remains and has evolved over time. Al Qaeda, although greatly diminished due to a robust intelligence and military campaign, is still a threat to the United States. Due to concerted efforts, Al Qaeda's leadership structure is fractured, operating as loosely affiliated members across the globe. Couple that with the rise of ISIS, and the Khorasan network, there is legitimate reason to suggest a change in tactics utilized by violent extremists. Concurrently, a breakdown in leadership networks suggests a breakdown in legitimate financial structures.

ISIS funds their criminal enterprise through extortion, theft, and the proceeds of illegal oil trading.<sup>94</sup> Additionally, ISIS generates income through difficult to track donations that are difficult to track from sympathizers, a trend exercised by Al Qaeda as well. This income generation occurs predominately outside of the United States, and outside of the formal financial network. As such, Title III of the Patriot Act, as it currently stands, is not poised to effectively target these illegitimate financial networks.

## **Conclusion:**

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<sup>92</sup> "Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on "Confronting New Threats in Terrorist Financing"," U.S. Department of the Treasury, Press Center, March 4, 2014.

<sup>93</sup> Prados, Alfred B., and Blanchard, Christopher M., Saudi Arabia: Terrorist Financing Issues," Congressional Research Service (2005): 28.

As foreign countries operate under their own system of laws and standards, the capabilities of the United States Treasury Department's enforcement arm becomes understandably minimized. That, coupled with the fact that terrorist operations are ever-evolving, operating in destabilized regions, and reliant heavily on generating income outside of formal banking networks. Given these aggravating factors, the influence and impact of Title III of the Patriot Act becomes particularly strained. As such, since the Patriot Act's inception, the actions taken directly against Al Qaeda and its affiliates under Title III have not revealed marked empirical evidence to substantiate the laws utility in targeting and enforcing terrorist financial networks abroad.

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<sup>94</sup> Jonsson, Michael, "Following the Money: Financing the Territorial Expansion of Islamist Insurgents in Syria," FOI Memo, May 23, 2014: 6.

### **Section III: Informal Networks**

#### **What is Hawala?**

Hawala is an informal banking network that has existed for centuries, initially as a way for merchants to travel and conduct business without the burden of carrying large amounts of currency. While hawala was a primary money laundering concern before 9/11, after 9/11 the informal value system has been of primary terrorist financing concern.<sup>95</sup> It is a system built on trust and tribal relationships that offer a quick, and affordable way to transfer money. Also, for immigrants to the United States coming from regions like Afghanistan that are absent a formal banking system, hawala offers a familiar way of doing business. Hawala, meaning “transfer” in Arabic, is a system that operates outside of traditional banking networks, offering an inexpensive alternative to formal transfer systems like that of a Western Union for example. With Western Union, value transfer requires registration and can occur online, over the phone, or in person for associated fees. The receiver and or recipient would both need to send and receive the money at a western union location or through a Western Union agent. Both the sender and recipient are required to provide government issued proof of identification to confirm their identity. The transaction would not be immediate. The quickest transaction, online or mobile-to-mobile would require the sender to have a debit or credit card from the United States.<sup>96</sup> The quicker the turnaround on the transaction then the higher the fees associated with the transaction. There is a cap on the amount that can be sent, \$3,000.

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<sup>95</sup> Bowers, Charles B., “Hawala, Money Laundering, and Terrorism Finance: Micro-Lending as and end to Illicit Remittance,” *Denver Journal of International Law and Policy*, Vol. 37:3, July, 2, 2009: 386.

Transactions over \$3,000 require legitimate bank accounts on both the sender and recipient side and additional identifiers to include government issued identification, bank statements, and a physical address.<sup>97</sup>

The hawala system is based on trust and connections through familial, tribal, or regional affiliations.<sup>98</sup> Countries with weak financial institutions rely on the hawala network as their main form of remittance. In these impoverished or under-developed countries where there is no formal banking system, restrictions on taking currency out of the country, or countries with foreign sanctions, the hawala system fills a critical void.<sup>99</sup> Rough IMF and World Bank estimations peg underground hawala activity conservatively at over \$10 billion dollars a year.<sup>100</sup> Other estimates suggest a global hawala network in the hundreds of billions.<sup>101</sup> In addition to providing a means of currency remittance in countries with deficient financial infrastructure, the hawala system can also provide an almost instant transaction at a competitive rate. In many cases, users turn to informal value transfer systems simply because of pricing. When a formal remitter could charge ten times the price and take weeks for currency to reach a destination, a hawala dealer through their trusted network, could provide faster services at a more competitive rate.

### **How Does Hawala Work?**

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<sup>96</sup> Westernunion.com, “Send Money online,” Last modified April, 2015, <https://www.westernunion.com/us/en/send-money-online.html>.

<sup>97</sup> Westernunion.com, “Send Money online,” Last modified April, 2015, <https://www.westernunion.com/us/en/send-money-online.html>.

<sup>98</sup> Jost, Patrick M., “The Hawala Alternative Remittance System and its Role in Money Laundering,” United States Department of the Treasury: 7.

<sup>99</sup> “Anti-Terrorism,” last modified May, 2002, [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usab5003.pdf](http://www.justice.gov/usao/eousa/foia_reading_room/usab5003.pdf): 17.

<sup>100</sup> “Financial War on Terrorism: New Money Trails Present Fresh Challenges,” Hearing Before the Senate Committee on Finance (2002): 35.

There are variations upon variations of hawala transactions but the most basic involves a person that sends money, two intermediaries (hawalaadars), and a person who receives money. Take for example the following hypothetical scenario:

*Jay (sender) who is living in the United States wants to send his cousin Rob (recipient), who is studying in India, \$11,000.00 to pay for class and cost of living expenses for the next semester. Jay solicits the help of Kim (hawaladar), a family friend that owns a small convenience store in the neighborhood, to help with the transfer. Kim was born in India and has been known to help friends and family transfer small amounts of money to and from India. Kim offers to help Jay out for a 5 percent commission and an exchange rate of 37 rupees per dollar. Upon payment Kim will immediately call her sister-in-law Mona who can give Rob the 17,575 rupees instantaneously. Jay thinks it's a pretty good deal considering the bank he just came from would take a 10 percent commission, a one-week turnaround on delivery, and 25 rupees on the dollar. This would leave Rob with Rs 11,250 as opposed to Rs 17,575. Jay decides to work with Kim and notifies Rob about where he can pick up the money. After receiving the \$500.00, Kim contacts Mona to authorize the transfer of money. Mona in turn gives Rob the Rs17, 575 as agreed upon. Jay and Rob's interaction is complete; no receipt of transaction just a word of mouth confirmation. Kim and Mona still need to settle as Mona, who gave Rob Rs 17,575, is still out her money. Kim, being a small business owner*

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<sup>101</sup> Bowers, Charles B., "Hawala, Money Laundering, and Terrorism Finance: Micro-Lending as and end to Illicit Remittance," *Denver Journal of International Law and Policy*, Vol. 37:3, July, 2, 2009: 382.



*that frequently imports and exports goods has made arrangements to send Mona DVDs and various electronics for her to sell in India. In order to create the perception of a legitimate business transaction, Kim over invoices Mona's order, sending her \$1,000 worth of goods but invoicing Mona for only \$500.00. Mona receives the goods, sells them, and sends back the invoice amount of \$500.00 to Kim, keeping the excess \$500.00 for herself and effectively closing the loop.<sup>102</sup>*

As evidenced by this scenario, the use of hawala is fast, cost effective, and reliable. Jay was able to send Rob money to buy books at a lower price than a formal system, and at an almost immediate turnaround on delivery. The appeal of hawala is that it offers a cheaper alternative to formal money transfer value systems. A hawaladar can manipulate exchange rates or charge fewer fees in order to appeal to customers. In addition, customers can avoid institutional bureaucracies and move currency quickly at a competitive rate. The above hypothetical scenario is an example of the most basic hawala transaction. A sender connects with a dealer, who connects with a dealer, who connects with a recipient. Because of the informal nature of the transfer system, hawala transactions differ from network to network. A different scenario could easily involve more than two intermediaries operating out of different countries, creating yet another layer in the system and further hiding the needle in the proverbial hay stack. Without a defined paper trail, and operating across the global divide, regulators and authorities struggle to pin down the elusive transactions that occur from sender to recipient. As more participants come into play, the complexities reveal themselves and create an even

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<sup>102</sup> Jost, Patrick M., "The Hawala Alternative Remittance System and its Role in Money Laundering," United States Department of the Treasury: 5-8.

more dynamic web of difficulties with respect to tracking where the money is and for what it is being used. In addressing the complexities inherent in tracking this informal network, the government took greater regulatory steps after 9/11 to try and better track informal remitters. From a cash smuggling perspective, a tangible target could be pinned down. In dealing with hawala, since there is no currency changing hands, these regulations do not apply. Patriot Act regulations were aimed at creating greater transparency and identifying suspicious transactions manifested in SARs which are self reported, or in the case of CTRs, automatically reported when dealing with transactions above \$10,000. In implementing these due diligence requirements, the onus rests heavily on legitimate institutions to identify activity and report it accordingly to FinCEN.

#### **Current Regulations: 9/11 and the Patriot Act**

As previously discussed in Section I, under the Bank Secrecy Act (BSA), the Secretary of the Treasury has the authority to establish certain checks on financial institutions in order to promote best practices, and provide adequate resources to law enforcement officials for the purpose of curbing illegal activity. In the wake of 9/11, much of the changes made were to provide greater information sharing among public and private institutions with the mindset that more requirements in reporting would yield greater transparency with respect to tracking terrorist financing activity. In addressing the informal money transmitters, the Patriot Act amended the BSA to clearly state that money transmitters, whether formal or informal, are all subject to the BSA. What this means is that hawalas post 9/11 are required to register with FinCEN as money services businesses (MSBs). Furthermore they are subject to the same rules and regulations

consistent with formal financial networks. That means keeping financial records, to include customer information, and to report suspicious activities via SARs and CTRs.<sup>103</sup>

In order to try and enforce compliance, strict penalties were enacted in the form of fines at the cost of \$5,000 a day for money service businesses that fail to register with FinCEN, and the possibility of five years imprisonment for operating an unregistered system.

In the majority of cases, the use of hawala is to fulfill a legitimate need, in many scenarios sending remittance back to an immigrant's home country to support family and loved ones. The concern however, is when the hawala network is used to facilitate illegal activity, most important the financing of terror. Given the lack of paper trail, and the ability to operate outside of formal networks, many turn to hawala as a means to facilitate illegitimate or illegal activity. Because of the popularity of the hawala system in the Middle East, this poses a particularly difficult national security problem for the United States. In efforts to combat the illegitimate use of hawala, the Patriot Act took significant measures to create greater transparency in reporting currency transactions. One of the major measures of the Patriot Act was greater compliance among financial institutions to report suspicious activity. In the most generic definition, under the law, any entity or person that transfers money as a business is defined as an MSB.<sup>104</sup> In order to operate as a legitimate MSB, one would need to register with the Financial Crimes Enforcement Network (FinCEN), establish certain checks on potential clients, and report suspicious activity.<sup>105</sup> In reporting information, financial institutions disclose activity to the federal

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<sup>103</sup> United States Department of the Treasury, "A Report to the Congress in Accordance with Section 359 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, November, 2002: 4.

<sup>104</sup> Government Accountability Office, "U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms," 2003: 16.

<sup>105</sup> Government Accountability Office, "U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms," 2003: 16.

government in the form of Suspicious Activity Reports (SARs), and Currency Transaction Reports (CTRs). Even though hawala networks operate outside of formal networks, there are some telling trends that can be observed through bank account activity.<sup>106</sup> A bank account used by a hawala dealer tends to show frequent deposit activity in the form of cash and checks, usually from foreign countries.<sup>107</sup> A bank, sensing unnatural movement in an account can file these SARs and CTRs with the Treasury, creating a database, and providing information to authorities to respond accordingly. The Financial Crimes Enforcement Network (FinCEN), housed within the Treasury, is the major institution tasked with enforcing the BSA and maintaining the database of SAR and CTR filings.

In addressing the enforcement of hawala networks, several challenges exist. The broad international scope of the network creates difficulties. If countries across the globe are accepting of this informal practice, how do we successfully partner with a country that doesn't agree with what we're trying to accomplish? Given the informal nature of the system with the lack of paper trail ties the hands of law enforcement officials to effectively prosecute informal transmitters. Without a defined paper trail you cannot effectively track the money that changes hands. The word of mouth association is also a factor, if a hawala system is based on relationships, how do you infiltrate that network? How do you regulate the unregulated given that the nature of the system is based on informalities. Forcing the system into compliance would dramatically change the convenience of the network.

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<sup>106</sup> Jost, Patrick M., "The Hawala Alternative Remittance System and its Role in Money Laundering," United States Department of the Treasury: 13.

<sup>107</sup> Jost, Patrick M., "The Hawala Alternative Remittance System and its Role in Money Laundering," United States Department of the Treasury: 13.

The main financial oversight objectives of the Patriot Act are fourfold. To fortify measures to detect, and prosecute terrorist financing abroad, to ensure checks on foreign financial institutions to prevent criminal activity, to require reporting of suspicious activity of all appropriate financial institutions, and to shore up defenses at U.S. financial institutions to prevent illegal transactions or activity.<sup>108</sup> Under Title III of the Patriot Act, there are 12 provisions that could affect financial institutions. Of those 12 provisions, Section 359 pertains directly to informal banking systems. The language in the Patriot Act amends the BSA to make it explicit that any and all money transmitters, formal or informal, are subject to the mandatory Treasury reporting requirements.<sup>109</sup> This provision amends the BSA to further define a money transmitter to include those operating under informal hawala networks as financial institutions. By expanding the definition, the amendment explicitly includes informal networks as financial institutions, and subjects the informal transmitters to the same rules and regulations under the BSA as legitimate financial institutions, to include filing SARs and CTRs. An MSB must register through the Treasury Department within 180 days after the establishment of the business and renewed every two years.<sup>110</sup> The form required to register, FinCEN form 107, is a two page document that requires the registrant to claim whether or not their MSB is involved in an IVTS, defined in the instructions as “any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of

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<sup>108</sup> “USA Patriot Act,” last viewed November 11, 2014, [http://www.fincen.gov/statutes\\_regs/patriot/](http://www.fincen.gov/statutes_regs/patriot/).

<sup>109</sup> United States Department of the Treasury, “A Report to the Congress in Accordance with Section 359 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, November, 2002: 7.

<sup>110</sup> FinCEN, “Money Services Business Registration,” Last modified April 1, 2015, [http://www.fincen.gov/financial\\_institutions/msb/msb.registration.html](http://www.fincen.gov/financial_institutions/msb/msb.registration.html).

the conventional financial institutions system.”<sup>111</sup> Applicants are also required to peg a financial institution and account number to their MSB.<sup>112</sup> An MSB, as defined in FinCEN Form 107, and thus required to register with the Treasury, includes money transmitters or anyone or that exchanges \$1,000, cashes checks, issues checks, sells checks, or redeems checks more than \$1,000 on any one customer on any day.<sup>113</sup> In order to comply with regulations, informal financial institutions would need to report suspicious activity to FinCEN. The threshold for reporting financial transactions is any transfer over \$3,000. Under this amendment to the BSA, MSBs are required to provide the information of the recipient of such financial transactions.<sup>114</sup>

#### **MSB REGULATION:**

The aim of requiring informal money transmitters to register as MSBs through FinCEN is to create greater oversight on financial transactions. The metrics, as detailed in Table 1, suggest an increase in MSB registration with new registrants since the laws inceptions totaling 41, 681 in 2010.<sup>115</sup> MSB registration since the Patriot Act has climbed incrementally, reaching a plateau in fiscal year 2006 and remaining at around 20,000 registrants annually.<sup>116</sup> Before that time period MSB registration was not available for online enrollment.

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<sup>111</sup> FinCEN Form 107, Last modified April 1, 2015.

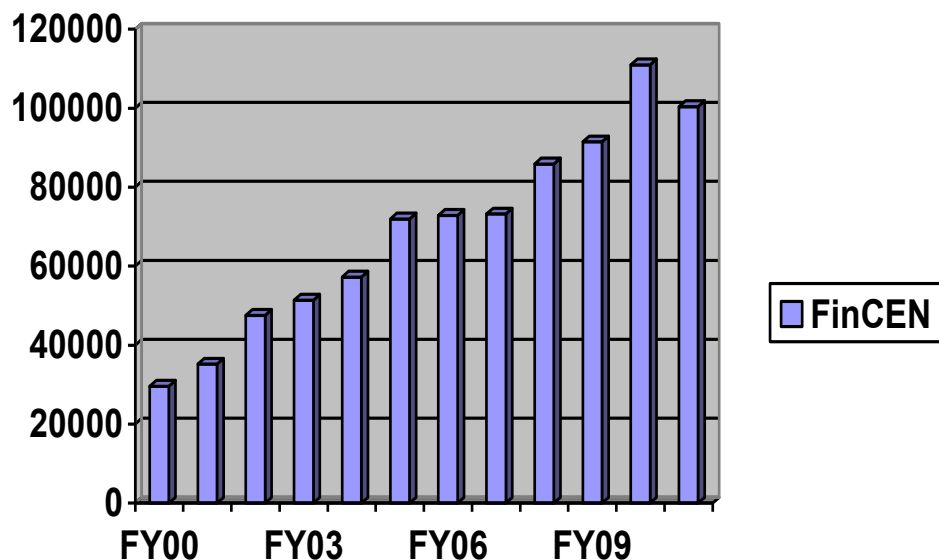
<sup>112</sup> FinCEN form 107, Last modified April 1, 2015.

<sup>113</sup> FinCEN form 107, Instructions.

<sup>114</sup> Field, Brian J., and Guiora, Amos M., “Using and Abusing the Financial Markets: Money Laundering as the Achilles’ Heel of Terrorism,” *Journal of International Law*, Volume 29, Article 2, 2007 : 83.

<sup>115</sup> Munshani, Kalyani, “Security Concern or Economic Motivations? The Regulation of Informal Value Transfer Systems.” *Oregon Review of International Law*, Volume 12, Article 77: 109.

**Table 1: MSB Registration, FY03-FY11**



In attempts to better regulate informal networks, a public-private partnership is the lynchpin to the strategies employed in the Patriot Act. The regulations require greater efforts on the public side to register with FinCEN, report activity, and establish internal checks to better address the threat of terrorist financing. On the regulatory side, it is the Treasury’s responsibility to provide a road map to follow. Section 361 speaks directly to this notion, requiring FinCEN to assist state, and local agencies with administering best practices.

Under Section 371, which focuses on the smuggling component of informal value transfers, the Patriot Act made it bulk smuggling a serious federal offense, allowing asset forfeiture of the proceeds uncovered in smuggling attempts. Under the language,

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<sup>116</sup> Financial Crimes Enforcement Network, “Annual Report,” 2002-2011.

smuggling of over \$10,000 are subject to five years imprisonment and forfeiture of proceeds at the time of seizure.<sup>117</sup> The case versus Alaa Al Saddawi, an imam with terrorist ties, who attempted to smuggle over \$600,000 to Egypt, is an example of Section 371 in action. The defendant's connection to a terrorist network, however, was tenuous.

As reflected above, much of the activity in preventing terrorist financing comes from abroad, with the mindset that given the global scope of terrorist networks, partnerships abroad seem be paramount to success. Much of the Hawala network has international implications as activity tends to center around an immigrant or expatriate sending money abroad to friends and family.

### **Hawala and Terrorism:**

Because of its roots, informality, and known method of money transmitting in the Middle East, the hawala system is an appealing way to transfer money outside of the watchful eye of security authorities across the globe. There have been hawala links to Al Qaeda in the precious stone business in order to launder and transfer terrorist financing.<sup>118</sup> There is also information to suggest that Al Qaeda utilized informal networks to transfer money out of Afghanistan during the U.S. invasion.<sup>119</sup>

The hawala network is a global system that ranges from country to country, operating in regulated territories like the United States, and in unregulated territories like Afghanistan. In the most common and legitimate of circumstances, foreign nationals

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<sup>117</sup> United States Department of Justice, "Report From the Field: The USA Patriot Act at Work," July, 2004: 9.

<sup>118</sup> Nissman, David. M, "Anti-Terrorism," United States Attorney's Bulletin, Volume 50, Number 3, May, 2002: 21.

<sup>119</sup> United States General Accounting Office, "U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms," November, 2003: 30.



come to the United States to work, and in turn send the money they make back to their families in impoverished countries.<sup>120</sup>

Under FinCEN the non-traditional methodology section is the program that most focuses on informal banking such as hawala. This subsection of FinCEN is essentially a think tank to better understand informal value transfer systems and lend support to law enforcement and regulators with information with respect to best practices. There is an infrastructure established after 9/11 to better address the issue of hawala, and developed countries are better poised to affect change than weak developing countries. In its essence, hawala is a difficult system to track and investigate, even more so as these hawala networks attempt to operate in more technologically advanced countries. There are trends that have been picked up that reveal themselves when tracked through formal systems. The temptation to use modern technologies such as the fax machine, email, wire transfers, have created hints of a paper trail making it easier to pin down illegal transmitters.<sup>121</sup> The Al-Barakaat system is a prime example of a hawala network revealing itself through legitimate sources. Al Baraakat was an informal system that relied on formal institutions to send money from foreign nationals working in the United States back to their home country of Somalia. Because of their use of formal networks, law enforcement was able to track activity through SARs and bring charges against the organization. After 9/11, in a race to track and freeze terrorist financing assets, the Al Barakaat office in the United States was raided, effectively freezing \$1 million in assets.

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<sup>120</sup> Nissman, David. M, "Anti-Terrorism," United States Attorney's Bulletin, Volume 50, Number 3, May, 2002:17.

<sup>121</sup> Nissman, David. M, "Anti-Terrorism," United States Attorney's Bulletin, Volume 50, Number 3, May, 2002: 13.

With respect to tracking terrorist financing however, more difficulties arose as the money that leaves the United States becomes more and more difficult to find.

Of the charges brought to bear, none had to do with terrorist financing. However, there was not much information to back the claim that Al Barakaat is a terrorist organization.

## **Results:**

Countries like India, that are hampered by the black market trade and have struggled with regulating hawala for years, and recognizing it's global reach, have solicited help from western countries to combat informal banking.<sup>122</sup> Based on the language in Title III, the United States solution to combating these informal networks is to regulate them through registering as an official money services business, and reporting suspicious activity through SARs and CTRs.

As previously discussed in Section I, CTR filings alone average 15 million reports filed annually through FinCEN.<sup>123</sup> The Patriot Act under Section 366 directs the Treasury to conduct a study of the SAR and CTR exemption process for filing, in addition to the related cost of filing. As the 2002 report revealed, of the roughly twelve million CTRs filed, over 30 percent were filed on recurring customer transactions that were exempt from reporting.<sup>124</sup> The abundance of CTRs filed pertains to regular day-to-day business transactions, yielding little information with respect to terrorist financing

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<sup>122</sup> Nissman, David. M, "Anti-Terrorism," United States Attorney's Bulletin, Volume 50, Number 3, May, 2002: 20.

<sup>123</sup> Subcommittee on Oversight and Investigations, 2007, Testimony of Megan Davis Hodge, American Bankers Association, May 10, 2007: 8.

<sup>124</sup> Financial Crimes Enforcement Network, Press Release, Survey on Costs of Filing Currency Transaction and Suspicious Activity Reports and the Use of the Exemption Process, August 30, 2002.

and or informal money remitters.<sup>125</sup> The cost does not appear to effectively address the problems surrounding informal terrorist financial networks. An intelligence leak in approximately 2010 revealed these exact frustrations; that despite U.S. efforts, a budding terrorist financing apparatus still remains. The document cited fundraising measures through kidnapping for ransom, bank robbery, the drug trade, and donations received during yearly pilgrimages to Mecca.<sup>126</sup>

As previously discussed, money laundering associated with hawala networks were the primary focus of regulators prior to 9/11, and justifiably so as FATF estimates link hawala networks closely to a money laundering network that the International Monetary Fund estimates peg at over 3 trillion a year.<sup>127</sup> When compared to hawala networks, and the money tied to attacks, which could cost as little as \$10,000, and in the case of the 9/11 attacks approximately \$500,000, the difference between estimated flow of money and the money to finance an attack is dramatic; a proverbial needle in a haystack.<sup>128</sup>

The main terrorist financing language in the Patriot Act in substance has remained consistent since the laws passage. By 2015, Al Qaeda's network has been deeply fragmented and their leadership structure and organization has been greatly degraded. As such, it would suggest that the funding mechanisms have become fragmented. Included in the evolution of terrorism is the rise of ISIS. Preliminary assessments of the group suggest a funding machine fueled by extortion, ransom, plundering, and illicit oil

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<sup>125</sup> Financial Crimes Enforcement Network, Press Release, Survey on Costs of Filing Currency Transaction and Suspicious Activity Reports and the Use of the Exemption Process, August 30, 2002.

<sup>126</sup> Lichtblau, Eric, Schmitt, Eric. New York Times, "Cash Flow to Terrorists Evades U.S. Efforts." December 5, 2010.

<sup>127</sup> Bowers, Charles B., "Hawala, Money Laundering, and Terrorism Finance: Micro-Lending as and end to Illicit Remittance," Denver Journal of International Law and Policy, Vol. 37:3, July, 2, 2009: 387.

<sup>128</sup> Bowers, Charles B., "Hawala, Money Laundering, and Terrorism Finance: Micro-Lending as and end to Illicit Remittance," Denver Journal of International Law and Policy, Vol. 37:3, July, 2, 2009: 388.

smuggling. Estimates peg ISIS income at \$1 million to \$5 million dollars generated a day.<sup>129</sup> These earning tactics are all occurring through informal networks, and outside the United States purview, therefore, immune to the influence of any provision inherent in the Patriot Act.

In addressing the ever-evolving threat posed by terrorist financing it is important to be able to understand the nature of the threat and adjust priorities accordingly. From a regulatory standpoint there is little to take away from the added reporting requirements inherent in the Patriot Act in order to address informal terrorist financial networks.

While the establishment of a public-private partnership is helpful in creating transparency and information sharing, new strategies need to be debated to close the gap between the formal and informal to better address the underground hawala network.

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<sup>129</sup> Daragahi, Borzou, and Solomon, Erika, "Fueling Isis Inc," Financial Times, September 21, 2014: 1.

### **Key Findings**

The objective of this thesis is a review Title III of the Patriot Act, which aims to uncover terrorist financing and take enforcement action accordingly. This occurs on several fronts, both domestically and internationally, and through formal and informal networks. In addressing this threat, Title III enhanced the government's capabilities to monitor suspicious activity through increased reporting requirements, and encouraging partnerships abroad to both adhere to international money laundering standards and punish those countries and financial institutions that do not comply. Additionally, greater transparency was sought to formalize the informal money transmitter by requiring and enforcing registration through the FinCEN. The enhanced reporting requirements are evidenced through the increase in SAR and CTR filling since the laws inception. The enhanced international compliance requirements are evidenced through the S. 311 actions taken against foreign countries and institutions of particular terrorist financing concern. The enhanced registration of informal money transmitters is evidenced through the increase in registrants since the laws inception. In creating a venue that fosters increased information sharing, greater compliance, and increased informal money transmitter registration, the central question to ask is whether these changes have met the objective of combating terrorist financing. What enforcement actions have been taken as a result of these changes?

The evidence to make this conclusion is demonstrated through the actions taken under the law that have effectively disrupted and dismantled terrorist networks that target the United States. The main intent of the Patriot Act is to “to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory

tools, and for other purposes.”<sup>130</sup> As articulated in this first sentence of the Patriot Act, the main objective of the law is two-fold: deter and punish. From a punishment standpoint, The Patriot Act provisions amended the BSA statutes, both civilly and criminally. As an example, a civil action can be taken when a company fails to comply with BSA standards and is subject to fines. The Bank Secrecy Act involved statute’s where there is a criminal recourse is associated with money laundering and operating an unregistered MSB. As an example, a criminal action can be taken when a terrorist tries to conceal their finances in furtherance of funding some sort of terrorist activity.

The evidence suggests that enforcement actions have remained fairly limited. This conclusion can be drawn through a review of actions taken, civil or criminal, as a result of Title III. As discussed, the foreign component did not directly target Al Qaeda and its affiliates through S. 311 provision. The Department of Justice, the prosecutorial arm of the United States government, touted the successful actions taken against terrorists under Attorney General Eric Holder from June, 2010 to March, 2015.<sup>131</sup> Of this sample size of approximately 60 cases, 13 cases were against individuals with affiliations to Al Qaeda. The charge most prevalent from case to case is providing material support to a terrorist organization. Material support is defined by U.S. Code as “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (one or more individuals who may be or include

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<sup>130</sup> The USA Patriot Act, P.L. 107-56, 107<sup>th</sup> Congress, October 26, 2001: 2.

<sup>131</sup> United States Department of Justice, “Accomplishments Under the Leadership of Eric Holder,” <http://www.justice.gov/accomplishments>

oneself), and transportation, except medicine or religious materials.”<sup>132</sup> The Patriot Act influence within this statute is by way of Section 805 which redefined material support to make it explicit that monetary contributions are considered material. Of this sample size, the lone case where it was explicit that an individual was being charged with providing financial support to Al Qaeda was the case of Wesam El-Hanafi. El-Hanafi was convicted in January 2015 on several counts of providing material support to Al Qaeda.<sup>133</sup> With respect to providing financial support, El-Hanafi was involved in funneling \$67,000 to operatives abroad.<sup>134</sup> It is not clear if the Title III provisions aided in flagging those proceeds or whether another mechanism was afoot. No enforcement actions under Title III were taken.

The same trend is noticeable in the Senate Intelligence Committee’s list of arrests and stopped plots from 2009-2012. Of the actions taken against terrorist networks with a focus on attacking the United States, the material support violations have been prevalent. The three cases that explicitly mentioned a financial support nexus were the three separate cases against Khalid Ouazzani, Raja Ladrasib Khan, Mohammad Hassan Khalid.<sup>135</sup> All three defendants had connections with Al Qaeda. Ouazzani used the proceeds of an apartment sale in the United Arab Emirates to support Al Qaeda.<sup>136</sup> Khan attempted to send funds to Al Qaeda overseas. The trip wire that uncovered Khan’s

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<sup>132</sup> 18 U.S. Code § 2339A - Providing material support to terrorists

<sup>133</sup> United States Department of Justice, “Brooklyn man Sentenced in Manhattan Federal Court to 15 Years in Prison for Providing Material Support to Al Qaeda,” January 20, 2015, <http://www.justice.gov/usao/nys/pressreleases/January15/ElHanafiWesamSentencingPR.php>

<sup>134</sup> United States Department of Justice, “Brooklyn man Sentenced in Manhattan Federal Court to 15 Years in Prison for Providing Material Support to Al Qaeda,” January 20, 2015, <http://www.justice.gov/usao/nys/pressreleases/January15/ElHanafiWesamSentencingPR.php>

<sup>135</sup> Senate Intelligence Committee, “Terrorist Arrests and Plots Stopped in the United States 2009-2012\*”

<sup>136</sup> Federal Bureau of Investigation, “Al Qaeda Supporter Pleads Guilty to Supporting Terrorist Organization,” May 19, 2010, <http://www.fbi.gov/kansascity/press-releases/2010/kc051910.htm>

intentions was through an undercover investigation.<sup>137</sup> Mohammad Hassan Khalid offered to facilitate the transfer of money to Al Qaeda.<sup>138</sup> It is not clear through which means money was transferred or whether money was actually transferred. Khalid was charged with providing material support to a terrorist organization. It is not clear whether any of the financial activity in these cases was flagged due to Title III provisions. None of the defendants were charged with any Title III violations.

### **Thesis Limitations:**

Enforcement action is one intended objective of Title III. However, since 9/11 national security has taken a proactive posture; stopping an incident before it happens. As such, deterrence is another intended objective. Although Title III may in fact achieved successes through deterrence, there is no measurement to determine the intelligence component and whether or not, regardless of the charges, the information provided through increased SAR and CTR reporting added clues to an eventual arrest or conviction. The deterrent strategy cannot be measured. If an event doesn't occur one cannot assess why it did not happen. Additionally, Title III of the Patriot Act is a small part to a greater whole. The enhancements in other aspects of the Patriot Act, tracking travel to and from the country, increased FISA authority, among others have played a factor in making it more difficult to conduct an attack. One can argue that even though few cases have been brought against Al Qaeda and its affiliates, Title III has been a

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<sup>137</sup> Federal Bureau of Investigation, "Chicago Man Charged with Providing Material Support to Al Qaeda by Attempting to Send Funds Overseas," March 26, 2010, <http://www.fbi.gov/chicago/press-releases/2010/cg032610-1.htm>

<sup>138</sup> Dale, MaryClaire, Mohammad Hassan Khalid, "Maryland High School Student, Charged In 'Jihad Jane' Terror Plot," [http://www.huffingtonpost.com/2011/10/21/mohammad-hassan-khalid-ma\\_n\\_1023921.html](http://www.huffingtonpost.com/2011/10/21/mohammad-hassan-khalid-ma_n_1023921.html)



success, offering a complimentary role in the grand scheme. These mitigating factors add to the difficulty in taking a stance as to whether or not Title III has been effective.

### **Conclusion:**

Title III of the Patriot Act is one part to the whole of the counterterrorism apparatus. Specifically, Title III of the Patriot Act is the national security tool to identify and punish terrorism financiers. Although Al Qaeda has diminished and de-centralized, there is little empirical evidence to directly point to the Title III provisions having success in targeting Al Qaeda's financial network. Targeting in the sense that the Title III provisions have not played a large role in enforcement actions against terrorist networks with a focus on doing harm to the United States.

Similar to Al Qaeda, there has been a trend toward more informal terrorist networks that sympathize with a cause and take independent action as "lone wolf" actors. Since 9/11, the two terrorist attacks on U.S. soil, the 2013 Boston marathon bombing, and the Fort Hood shooting, have mirrored the lone wolf model. Additional terrorist related incidents that have garnered significant attention in the media to include the rise of ISIS, the Charlie Hebdo attacks in Paris, and the attack on Canadian Parliament have created a dialogue with respect to addressing the contemporary threat posed by lone actors inspired by extremist rhetoric. Based on these incidents, the blurred lines between the lone wolf and a sophisticated terrorist network have become muddled. This decentralization of terrorist activity makes it even more difficult to uncover terrorist related activities. The recent attacks were not heavily leveraged financially and did not prompt any concern from financial institutions. There was nothing to report.

Formality, however, is relative. Even at its most organized, there is little information to suggest that formal financial networks, at home or abroad, were essential to Al Qaeda's operational efforts. Much of the Title III provisions were focused on formal compliance and information sharing. The Title III provisions increased reporting from legitimate financial institutions but there was little evidence linking financial transactions to terrorist financing. As such, the increase in information gleaned under Title III did not prompt robust enforcement action. Such is the case with informal financial networks. While measures were taken to create greater transparency through MSB registration, little information has yielded enforcement action as a result of the Title III provisions. In totality, while the increase in intelligence and information sharing as a result of the Title III provisions of the Patriot Act may have fostered a robust deterrent posture, the punishment arm manifested in the form of successful convictions, has not effectively been exercised.

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R. Benson Erwin received his Bachelor of Arts degree in International Studies from The Johns Hopkins University in 2005. Post graduation, he embarked on several civically guided endeavors to include work on political campaigns, and as a staffer for a United States Senator. His work on Capitol Hill, and desire to continue to work in the service of the public prompted him to apply for a job with the Federal Bureau of Investigation. He is currently employed as a Special Agent and resides in Boston, Massachusetts.