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FOREIGN REGIMES' ASSETS

The United States
Faces Challenges in
Recovering Assets, but
Has Mechanisms That
Could Guide Future
Efforts



G A O

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Highlights of [GAO-04-1006](#), a report to congressional requesters

Why GAO Did This Study

For many years, the United States has used economic sanctions, including the freezing of foreign regimes' assets, when such regimes have been determined to be a threat to the nation. In light of recent efforts to "recover"—or target, identify, freeze, and transfer—Iraqi assets, GAO was asked to examine overall U.S. efforts to recover foreign regimes' assets. This report (1) describes the approach the U.S. government uses to recover foreign regimes' assets, (2) examines the challenges the United States faces in recovering foreign regimes' assets, and (3) examines the mechanisms the United States has used to recover Iraqi assets and their applicability to future efforts.

What GAO Recommends

GAO recommends that the Departments of State and the Treasury (1) work with U.S. intelligence and law enforcement agencies to improve target identifiers and (2) develop and document lessons learned from the Iraq effort that could assist with future efforts. State agreed with these recommendations. Treasury did not comment on them. GAO also recommends that Treasury seek legislative authority to allow financial regulators to share complete information from their examinations with OFAC. Treasury said it was working on this issue and is uncertain that a legislative change is needed to allow OFAC access to information from financial regulators' examinations.

www.gao.gov/cgi-bin/getrpt?GAO-04-1006. To view the full product, including the scope and methodology, click on the link above. For more information, contact Joseph A. Christoff at (202) 512-8979 or christoffj@gao.gov, or Davi M. D'Agostino at (202) 512-8678 or dagostinod@gao.gov.

FOREIGN REGIMES' ASSETS

The United States Faces Challenges in Recovering Assets, but Has Mechanisms That Could Guide Future Efforts

What GAO Found

The approach the U.S. government takes to recover foreign regimes' assets varies depending on the foreign policy and national security goals pursued. Treasury officials stated that the goal of economic sanctions is to freeze assets of a sanctioned jurisdiction or targeted designee and prohibit U.S. persons from dealing with them. In certain cases, once the foreign policy goals of the sanctions are met, the assets are returned to a country. The Departments of Justice, State, and the Treasury, as well as intelligence and law enforcement agencies, work together in the targeting process. Identifying the location of financial assets throughout the international financial system requires the cooperation of U.S. and foreign financial institutions. The United States has procedures to freeze assets of targeted regimes located in the United States or under the control of U.S. persons. Pursuant to executive orders issued by the President under various authorities, Treasury's Office of Foreign Assets Control (OFAC) issues regulations that can require assets to be frozen and transactions to be blocked and administers sanctions programs.

U.S. government agencies and financial institutions involved in recovering targeted regimes' assets face a number of challenges. First, U.S. agencies may not be able to readily obtain accurate and complete information on targeted entities, such as the spelling of names, addresses, and dates of birth. Financial institutions can also lack complete identifying information on their clients. Second, the laws of some foreign governments complicate the ability of overseas branches of U.S. financial institutions to comply with OFAC regulations. In these situations, the U.S. government encourages the relevant foreign governments to allow U.S. financial institutions to freeze or transfer assets in a manner consistent with U.S. law or Treasury issues a license to allow U.S. financial institutions to comply with local laws. Third, OFAC's ability to monitor financial institutions' compliance with its regulations is limited because it relies on financial regulators to monitor financial institutions' OFAC compliance programs.

The United States has used a variety of legal authorities and coordinating bodies in its recent effort to recover Iraqi assets; some of these mechanisms could be applied to future efforts. The USA PATRIOT Act of 2001 allowed the United States to take ownership of \$1.9 billion of Iraqi assets and transfer them for use in Iraq reconstruction efforts. United Nations Security Council Resolution 1483 has resulted in the transfer of about \$847 million in frozen Iraqi assets to a fund for Iraq. However, factors that include existing claims against the assets and other countries' laws have slowed the transfer of an additional \$2.9 billion held in other countries. In addition, some mechanisms developed to combat money laundering and terrorist financing might be applicable to recovering foreign regimes' assets. Although the U.S. government has used various legal authorities and coordinating bodies to recover foreign regimes' assets, it has yet to compile lessons learned from past efforts that could guide future efforts.

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Abbreviations

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| CPA | Coalition Provisional Authority |
| DFI | Development Fund for Iraq |
| FATF | Financial Action Task Force |
| FBI | Federal Bureau of Investigation |
| FIU | financial intelligence unit |
| IEEPA | International Emergency Economic Powers Act |
| NEA | National Emergencies Act |
| OFAC | Office of Foreign Assets Control |
| OIG | Office of Inspector General |
| SDN | Specially Designated Nationals |
| SEC | Securities and Exchange Commission |
| U.N. | United Nations |
| UNPA | United Nations Participation Act |
| USA PATRIOT Act | Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act |

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United States Government Accountability Office
Washington, D.C. 20548

September 14, 2004

The Honorable Michael G. Oxley
Chairman
The Honorable Barney Frank
Ranking Minority Member
Committee on Financial Services
House of Representatives

The Honorable Sue W. Kelly
Chairwoman
The Honorable Luis V. Gutierrez
Ranking Minority Member
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives

The United States has used economic and trade sanctions, including the freezing of financial assets and blocking of transactions, to achieve various U.S. foreign policy and national security goals. These sanctions can be targeted against foreign countries, terrorists, international narcotics traffickers, and those engaged in the proliferation of weapons of mass destruction, among others. Some foreign regimes, whose assets were frozen by the United States, had accumulated billions of dollars in illegal assets. For example, in March 2004, we reported that, between 1997 and 2002, Saddam Hussein's regime accumulated an estimated \$10.1 billion through oil smuggling and surcharges against oil sales and illicit commissions from commodity suppliers.¹

In light of recent efforts to recover Iraqi assets, you asked us to examine overall U.S. efforts to recover foreign regimes' assets. In this report, we use "recovering foreign regimes' assets" to refer to the process of targeting, identifying, freezing, and, in some cases, transferring assets to legitimate governments of targeted nations.² This report focuses on U.S. government

¹GAO, *Recovering Iraq's Assets: Preliminary Observations on U.S. Efforts and Challenges*, GAO-04-579T (Washington, D.C.: Mar. 18, 2004).

²Targeting is the process of determining whose financial assets will be sought. Identifying is the process of ascertaining the accounts in which the assets are located. The freezing process prevents the movements of the assets, and the transferring process transmits them to accounts of a new government.

procedures to recover assets of foreign regimes targeted under economic sanctions. It (1) describes the approach the U.S. government uses to recover foreign regimes' financial assets, (2) examines the challenges the United States faces in recovering foreign regimes' assets, and (3) examines the mechanisms the United States has used to recover Iraqi assets and their applicability to future efforts. This report does not examine other methods such as criminal prosecutions, civil and criminal asset forfeiture proceedings, asset sharing, and restitution authority, which are enforced by the Department of Justice.

We reviewed documents from the U.S. government, United Nations, and private firms, including testimonies, reports, and relevant laws. We interviewed key U.S. government officials from multiple U.S. government agencies. We also interviewed private firm representatives that specialize in asset recovery, representatives of U.S. financial institutions responsible for complying with orders to freeze assets and block transactions, and trade associations representing segments of the U.S. financial services industry.

We conducted our work from May 2003 to August 2004 in accordance with generally accepted government auditing standards. (See app. I for additional information on our scope and methodology.)

Results in Brief

The approach the U.S. government takes to recover foreign regimes' assets varies depending on the foreign policy and national security goals pursued. Officials at the Department of the Treasury stated that the goal of economic sanctions is to freeze assets of a sanctioned jurisdiction or targeted designee and prohibit U.S. persons from dealing with the subject of the sanctions. In most cases, once the foreign policy goals of the sanctions are met, economic sanctions result in the return of assets to a country, as in the case of Afghanistan. Historically, most asset recovery efforts have focused on targeting the financial assets of a country's government; however, since September 11, 2001, these efforts have focused increasingly on individuals and groups associated with targeted regimes. The Departments of Justice, State, and the Treasury, as well as intelligence and law enforcement agencies, work together in the targeting process. Identifying the location of financial assets throughout the international financial system requires the cooperation of U.S. and foreign financial institutions. The United States has procedures to freeze assets of targeted regimes located in the United States or under the control of U.S. persons. Pursuant to executive orders issued by the President under various

authorities, Treasury's Office of Foreign Assets Control (OFAC) issues regulations that can require assets to be frozen and transactions to be blocked and administers sanctions programs.

U.S. government agencies and financial institutions involved in recovering foreign regimes' assets face a number of challenges. First, U.S. agencies may not be able to readily obtain accurate and complete information on targeted entities, such as the spelling of names, addresses, and dates of birth. In some instances, according to agency officials, such identifiers are classified to protect the sources of the information. Financial institutions can also lack complete identifying information on their clients, such as dates of birth. For both reasons, it can be difficult for financial institutions to accurately or expeditiously identify and freeze accounts of targeted entities. Second, according to Treasury officials, some foreign countries' domestic legal systems do not allow their governments to freeze targeted assets and, in some cases, prohibit the transfer of assets to a newly constituted government. These prohibitions affect branches of U.S. financial institutions located in these countries. OFAC officials stated that the United States works diplomatically to encourage the relevant foreign governments to allow U.S. financial institutions to freeze or transfer assets in a manner consistent with U.S. law or, conversely, the Treasury issues a license to allow U.S. financial institutions to comply with local laws. Third, OFAC's ability to monitor financial institutions' compliance with its regulations is limited because it does not have supervisory authority over financial institutions and, thus, relies on financial institution regulators to monitor financial institutions' OFAC compliance programs. In April 2002, Treasury's Office of Inspector General recommended that Treasury inform Congress that OFAC's ability to ensure financial institution compliance with foreign sanctions would be enhanced through a legislative change that would enable bank regulators to share information from their compliance examinations with OFAC. OFAC agreed that its legislative authority could be improved, but as of August 2004, Treasury had not acted on this recommendation.

The United States has used a variety of domestic and international legal authorities and coordinating bodies in its recent efforts to recover Iraqi assets; some of these mechanisms could be applied to future efforts. The USA PATRIOT Act amendment to the International Emergency Economic Powers Act (IEEPA) allowed the United States to vest—that is, take ownership of—\$1.9 billion of frozen Iraqi assets and transfer them for use in Iraq's administration and reconstruction. Implementation of United Nations (U.N.) Security Council Resolution 1483 has resulted in the

transfer of about \$847 million in frozen Iraqi assets located in other countries to a fund for Iraq as of June 2004. However, factors—including existing claims against the assets and other countries’ laws governing the ability of these countries to freeze and transfer assets of foreign regimes under various conditions, such as U.N. resolutions—have slowed the transfer of an additional \$2.9 billion in Iraqi assets held in other countries. Some mechanisms that were initially developed to combat money laundering and terrorist financing may generally facilitate the recovery of foreign regimes’ assets. For example, in May 2004, the United States used one section of the USA PATRIOT Act to designate a Syrian bank as a “primary money laundering concern” and propose a rule that requires U.S. financial institutions to sever certain accounts with a Syrian bank that was used as a conduit for laundering proceeds from illicit Iraqi oil sales. Although the U.S. government has used various legal authorities and coordinating bodies to recover foreign regimes’ assets, it has yet to compile lessons learned from past efforts that could guide future efforts.

In this report, we make recommendations to the Departments of State and the Treasury to work with U.S. intelligence and law enforcement agencies to improve account identifying information and develop and document a compilation of lessons learned from the Iraq effort that could assist with future efforts. We are also recommending that Treasury seek legislative authority, if necessary, to allow financial regulators to share complete information from their examinations with OFAC.

In responding to our draft report, State agreed on the need to improve the accuracy and completeness of account identifying information and the need to document lessons learned from the current effort to recover Iraq’s assets. Treasury did not comment on these two recommendations. With regard to the recommendation that it seek legislative authority to allow financial regulators to share information from their examinations with OFAC, Treasury stated that based on meetings it had held with financial regulators, it is not clear that legislative changes are necessary and that it expected to have comprehensive arrangements in place shortly to enhance information sharing. We agree that further information sharing between OFAC and the financial regulators would be helpful, and we encourage Treasury to seek whatever legislative solutions are necessary to overcome any obstacles to further information sharing. We modified our recommendation to reflect Treasury’s efforts and reaffirm the importance of ensuring that information sharing is enhanced.

Background

Foreign regimes' assets can be targeted by unilateral, multilateral, or U.N. Security Council sanctions programs. Economic sanctions programs fall into two broad categories—(1) financial sanctions and asset freezes and (2) trade and commercial embargoes. Sanctions are generally used when other efforts, such as diplomacy, fail. Since 1979, the United States has frozen the assets of governments, individuals, or entities associated with 12 countries (see app. II). Each sanctions program is unique, as are the circumstances and objectives.

The United States and the international community have significantly increased the number of targeted individuals and entities over the last decade. Until the late 1990s, targeting the financial assets of governments, persons, and entities was normally part of a broader sanctions program aimed at cutting off most or all economic relations with a country. However, beginning in the late 1990s, the international community acknowledged that broader sanctions programs can take many years to achieve their goals and can adversely affect entire populations of targeted countries. To reduce these impacts, in recent years, the United States and the international community have begun implementing sanctions that target the assets of specific persons and entities.

The United States, working with the United Nations, has urged the adoption of U.N. Security Council resolutions to freeze the assets of both terrorists and sanctioned foreign regimes. For example, in October 1999, the Security Council adopted Resolution 1267, which called on all member states to freeze the assets of the Taliban regime. In response to the attacks of September 11, 2001, the Security Council adopted Resolution 1373 in September 2001, requiring all U.N. member states to freeze funds and other financial assets or economic resources of persons who commit, attempt to commit, participate in or facilitate terrorist acts. A subsequent resolution in January 2002 (Resolution 1390) called on all member states to freeze the assets of Osama bin Laden and al Qaeda. Pursuant to this line of resolutions, the United Nations has listed nearly 300 names of individuals and entities for worldwide asset freezes. These resolutions target governments, political leaders, individuals, or groups.

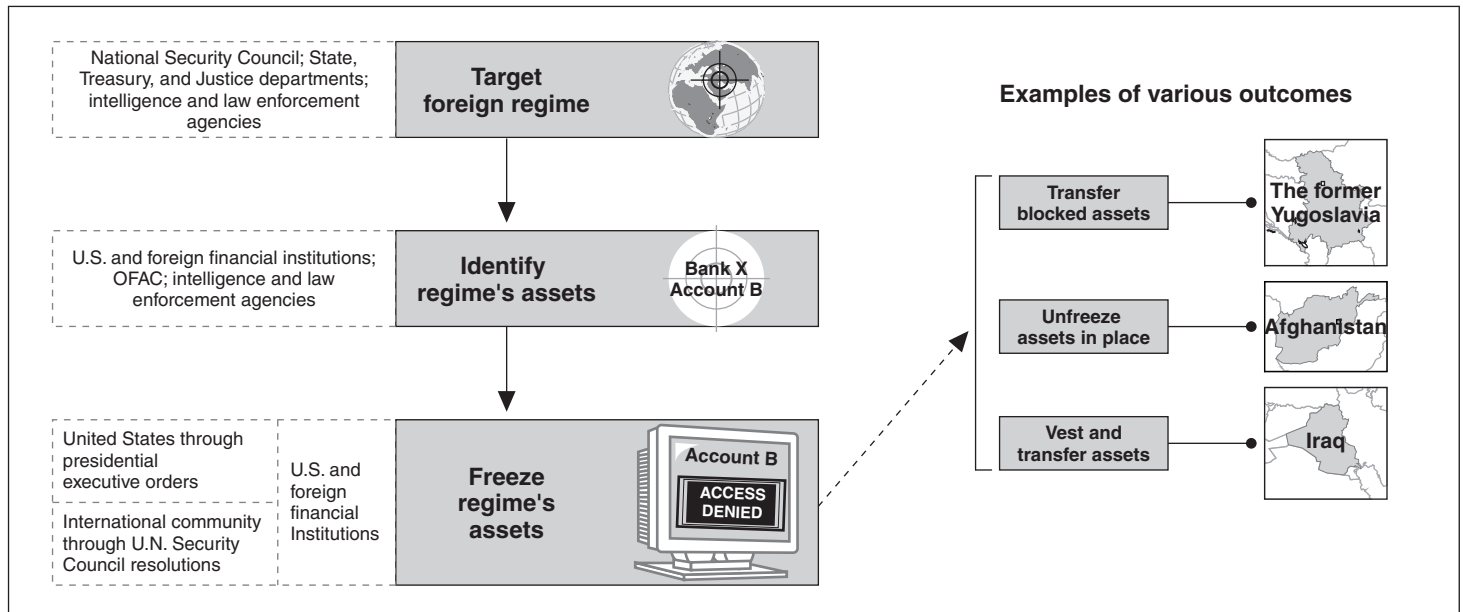
Several U.S. laws authorize the recovery of foreign regimes' assets, including IEEPA, as amended by the USA PATRIOT Act,³ National Emergencies Act (NEA), Trading with the Enemy Act (TWEA), and the United Nations Participation Act (UNPA). These laws are generally implemented by presidential executive orders and agency guidance that provide entities, such as financial institutions, with specific lists of targets to ensure that financial assets are blocked or frozen to prevent their movement. Appendix III provides a summary of key domestic legal authorities used to freeze foreign regimes' assets.

The U.S. Government's Approach to Recovering Foreign Regimes' Assets Varies Depending on the Goals Pursued

The U.S. government's approach to recovering assets of foreign regimes varies depending on the U.S. foreign policy and national security goals pursued. This process can involve targeting, identifying, freezing, or blocking assets, and, in some cases, transferring assets of governments, political leaders, individuals, or groups to legitimate governments. Over the last decade, the efforts of the United States and the international community have focused more on individuals and groups associated with targeted regimes than entire countries. Assets can be located throughout the international financial system; identifying their location requires the cooperation of U.S. and foreign financial institutions. The United States has procedures to freeze targeted regimes' financial assets located in U.S. financial institutions and has transferred assets back to a country in a few cases. Figure 1 illustrates this approach, outlines the various agencies and institutions involved in the asset recovery process, and identifies the legal authorities used.

³Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, 115 stat. 272 (2001).

Figure 1: The United States' Approach to Recovering Foreign Regimes' Assets



Sources: GAO; Art Explosion (images).

Figure 1 illustrates that the approach can involve four parts: targeting or determining whose financial assets will be frozen; identifying or ascertaining the accounts in which the assets are located; freezing or immobilizing the assets; and transferring or transmitting assets to accounts of a new government. It also identifies the various government agencies and financial institutions that can be involved in the approach and the legal authorities used for implementing the approach. Additionally, figure 1 provides examples of various outcomes of a foreign regime asset freeze: transferring of blocked assets; unfreezing of assets in place; or vesting (taking ownership of) and transferring assets, as illustrated by the cases of the former Yugoslavia, Afghanistan, and Iraq.

Several U.S. Agencies Are Involved in Targeting Assets of an Increasingly Greater Number of Foreign Regime Entities

The Departments of Justice, State, and the Treasury, the Central Intelligence Agency, and the National Security Council have been key actors in foreign regime asset recovery. Domestically, the Department of State, in consultation with the National Security Council and other executive branch agencies, generally determines whose financial assets will be targeted, under what authority the action will be pursued, and

whether the effort will be undertaken unilaterally or multilaterally, as under U.N. Security Council resolutions. Once a decision is made, the President of the United States issues an executive order that gives U.S. executive branch agencies the authority to undertake these actions.

The mandate of OFAC, the administrator and enforcer of U.S. economic sanctions programs, is to require all U.S. persons, including financial institutions, to freeze targeted assets located in the United States or under the control of a U.S. person outside of the United States. OFAC “targets” an individual, group, or entity by placing its name on the Specially Designated Nationals (SDN) list.⁴ According to OFAC officials, OFAC works with the Departments of Justice and State, other components within Treasury, and intelligence and law enforcement agencies to develop adequate evidence to place individuals or entities on the SDN list. Officials at these agencies stated that this targeting process can be completed in weeks or months, depending on several factors, such as the availability of accurate information and the corroboration of intelligence collected from multiple sources.

The Department of Justice’s Civil Division advises OFAC on the legal sufficiency of the evidence to comply with IEEPA requirements and would also defend the United States against any potential lawsuits that result from a targeting decision. OFAC then places targeted names on its SDN list. OFAC posts updated information on its public Web site and in the *Federal Register*, and provides electronic notification services to financial institutions. In addition, third party vendors provide subscription services that track OFAC developments, and the Federal Reserve notifies U.S. financial institutions of updates to the SDN list through Fedwire, an electronic system that allows it to contact approximately 9,500 financial institutions.

OFAC also provides specific guidance to financial institutions, which are required to comply with orders to freeze assets. In addition, OFAC officials stated that, when appropriate, they contact some banks and firms individually. According to OFAC officials, the office sends OFAC personnel

⁴In addition to its country sanctions, OFAC publishes a list of individuals and companies owned or controlled by, or acting on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country specific. Collectively, such individuals and entities are called “Specially Designated Nationals and Blocked Persons” or “SDNs.” Their assets are blocked, and U.S. persons are generally prohibited from dealing with them.

to the physical locations in the United States of known commercial, real, or tangible properties of the target to serve blocking notices to secure property. In some cases, these personnel shut down branches and subsidiary firms controlled by the target.

In 2003, the Departments of Defense and Homeland Security, as well as intelligence and law enforcement agencies, became more involved in tracking foreign assets. For example, in the case of Iraq, the Department of Defense has been on the ground assisting efforts to locate assets of the former Iraqi regime. Department of Homeland Security, Federal Bureau of Investigation (FBI), Internal Revenue Service criminal investigators, and intelligence agency representatives have worked in Iraq to identify leads to the former regime's hidden assets. See appendix IV for more information about U.S. efforts to recover Iraqi assets.

The Department of State coordinates with the United Nations to place names of targets identified through the U.S. targeting process on the appropriate U.N. designation list.⁵ Internationally, OFAC develops and corroborates evidence collected by other countries on targets they have identified and proposed to the United Nations for inclusion on a designation list. State works diplomatically with other U.N. members to obtain the international consensus needed to place all targets for which OFAC has sufficient corroborating evidence on the U.N. lists. For example, as of June 2004, U.N. members had achieved consensus on over 500 names of individuals and entities associated with the Taliban, al Qaeda, and the former Iraqi regime, and had placed them on U.N. designation lists. U.S. government officials have also participated in international forums, such as Interlaken and Stockholm, to discuss more effective ways of targeting economic sanctions.⁶

⁵In addition to the SDN list used by the United States, the United Nations also maintains lists of individuals and entities whose assets should be frozen. These lists are maintained pursuant to U.N. Security Council resolutions.

⁶The Swiss government hosted a number of expert seminars attended by representatives from national governments, central banks, and the U.N. Secretariat, among others, on the targeting of United Nations financial sanctions in 1998 and 1999. These seminars became known as the "Interlaken Process." The German government sponsored the Bonn-Berlin process, which took place over 2000-2001, on the design and implementation of arms embargoes and travel and aviation bans. The Swedish government and a Swedish university initiated the "Stockholm Process" in November 2001. It reported on its work to the U.N. Security Council in February 2003.

Identifying the Location of Assets Requires Domestic and International Cooperation

Financial assets of targets can be spread throughout the international financial system, and identifying their location requires the cooperation of U.S. and foreign financial institutions. U.S. government agencies involved in recovering assets work domestically and with foreign government counterparts and financial institutions to identify and locate the assets of targeted foreign regimes.

U.S. intelligence and law enforcement agencies are involved in the identification process by developing leads and working with counterparts in other countries. For example, in 2003, the Department of Defense's Defense Intelligence Agency provided some of the research and analysis used to identify assets of the former Iraqi regime. However, according to OFAC officials, if there is little reason to believe that a regime's assets will be targeted, intelligence and law enforcement agencies are less likely to gather the kind of information needed by financial institutions to identify a targeted regime's assets. This situation can pose a challenge to identifying assets in the international financial system. According to U.S. officials and experts on the subject of asset recovery, identifying assets also requires the expertise of lawyers and investigators from various jurisdictions to coordinate efforts to unravel what may be complicated financial transactions. For example, in November 2003, the Department of Homeland Security created the Iraqi Provisional Investigations Task Force, which Treasury participated in, to share information obtained from Iraqi documents and to coordinate their activities with other U.S. government agencies. According to Treasury and State officials, the leads have been provided to U.S. embassy officials working diplomatically with foreign governments to recover the targeted assets.

According to U.S. officials, since September 11, 2001, contacts between U.S. law enforcement officials and prosecutors and foreign officials have increased. FBI legal attachés overseas and foreign police authorities regularly share criminal intelligence.⁷ Information to further criminal investigations and prosecutions is also exchanged between U.S. and foreign prosecutors. Such exchanges are facilitated through designated "central authorities" under treaties the United States maintains with several other countries. The United States sometimes provides sensitive information to foreign treaty partners in response to formal requests.

⁷The FBI's legal attachés work to gain cooperation with international police partners in support of the FBI's domestic mission. Their goal is to link law enforcement resources and other officials outside the United States with law enforcement in this country.

However, this process can be lengthy, according to agency officials. Other countries have their own standards of evidence, and may have limitations on whether, and how, they can utilize information and evidence obtained from the United States. In addition, some countries' laws require the demonstration of a criminal act before allowing any attempts to identify assets of selected targets.

The United States Has Procedures to Freeze Assets of Targeted Regimes Located in the United States or Under the Control of U.S. Persons

The United States has procedures, including domestic legal authorities and an implementing agency, to freeze assets of targeted foreign regimes in the United States or under the control of U.S. persons. Treasury's OFAC, under an executive order declaring a national economic emergency, issues regulations implementing requirements that targeted regimes' assets be frozen and transactions involving individuals, groups, or entities associated with these regimes be blocked. While OFAC's regulations require compliance by all U.S. persons, compliance by financial institutions is crucial because these institutions often hold the targeted assets as deposits or securities or because the institutions could be used to facilitate transactions involving the assets. Financial institutions and their employees, as do all U.S. persons, face criminal penalties of up to 10 years' imprisonment and, in the absence of statutory authority in addition to IEEPA, fines of not more than \$50,000 for willful violations and civil penalties of up to \$11,000 per violation for noncompliance.⁸

The United States Has Transferred Assets Back to a Country in Certain Cases

The United States has transferred assets back to the newly constituted governments of countries in certain cases, including the former Yugoslavia, Afghanistan, and Iraq; however, the circumstances varied in each case.

In the case of the former Yugoslavia, according to OFAC, \$237.6 million in funds belonging to the Central Bank of the Socialist Federal Republic of Yugoslavia that had been frozen were transferred to the central banks of the successor states prior to sanctions being lifted. The transfers occurred primarily in April and May 2003.

⁸These penalties apply to violations of regulations, licenses, and orders issued pursuant to IEEPA. 50 U.S.C. §1705. Under the Iraq Sanctions Acts, penalties for violations of the Iraqi Sanctions Regulations are significantly higher (up to 12 years in prison and \$1 million in criminal penalties and up to \$275,000 for civil penalties).

In the case of Afghanistan, funds of the Taliban regime initially frozen in 1999 were transferred to an existing central bank account at the Federal Reserve Bank of New York.⁹ OFAC unblocked the account, and the Afghan government had the funds transferred to an account in another country. According to OFAC, \$217 million was unfrozen and released to the Afghan Interim Authority in January 2002.

In the case of Iraq, under a March 20, 2003, executive order, the United States vested funds previously blocked in the accounts of the government of Iraq and certain Iraqi entities. The Treasury then directed the transfer of the funds to a U.S. Treasury account held at the Federal Reserve Bank of New York. U.S. Treasury officials issued instructions to the Federal Reserve Bank of New York to transfer the funds in cash installments to the Coalition Provisional Authority (CPA) in Iraq.¹⁰ Between May and December 2003, \$1.7 billion was transferred to the CPA and \$208 million to the Development Fund for Iraq (DFI).¹¹

U.S. Government Agencies and Financial Institutions Face a Number of Challenges in Recovering Foreign Regimes' Assets

U.S. government agencies and financial institutions involved in recovering foreign regimes' assets face a number of challenges. First, law enforcement and intelligence agencies do not always have accurate and complete information, such as the spelling of names, addresses, and dates of birth, to provide to OFAC for distribution to U.S. financial institutions and other countries' to assist in their efforts to locate assets of targeted foreign regimes. Second, the local laws of some foreign governments where branches of U.S. financial institutions are located sometimes complicate efforts to freeze or transfer financial assets. Third, OFAC's ability to monitor financial institutions' compliance with its regulations is limited because it does not have supervisory authority over financial institutions

⁹The funds were transferred to the Federal Reserve Bank of New York due to the Federal Reserve System's role as the fiscal agent for the United States Treasury and other government agencies.

¹⁰The CPA, established in May 2003, was the U.N.-recognized coalition authority led by the United States and the United Kingdom that was responsible for the temporary governance of Iraq. The CPA transferred power to a sovereign Iraqi interim government on June 28, 2004.

¹¹On May 22, 2003, U.N. Security Council Resolution 1483 recognized the establishment of the DFI to provide a repository for Iraqi funds to support the reconstruction of Iraq. DFI funds consist of oil proceeds, U.N. Oil for Food program surplus funds, and returned Iraqi government and regime financial assets.

and relies on financial regulators to monitor financial institutions' OFAC compliance programs.

Target Information Needed to Locate and Freeze Financial Assets Is Not Always Readily Available

Law enforcement and intelligence agencies do not always have accurate and complete information, such as the spelling of names, addresses, and dates of birth, to provide to OFAC for distribution to U.S. financial institutions and other countries' to assist in their efforts to locate assets of targeted foreign regimes. The large number of names—more than 3,500—on the OFAC SDN list compounds this problem. For example, in the case of Iraq, U.S. officials stated that information provided by OFAC for many of the targeted individuals lacked accurate or complete identifiers such as dates of birth. In addition, Treasury and Defense Department officials stated that intelligence agencies sometimes had to declassify key account identifying information before providing it to financial institutions. U.S. officials said this process could take months.

According to OFAC officials, financial institutions may also lack complete identifying information on their clients, such as dates of birth, which makes it more difficult for them to quickly determine if a name on the OFAC list matches an account at their institution. Before passage of the USA PATRIOT Act, U.S. financial institutions were not required to collect as much identifying information about their clients as they are now. Regulations issued under section 326 of the act now require financial institutions to collect certain identifying information about new clients seeking to open an account, such as name, address, and date of birth.¹² OFAC officials stated that during the past 15 years, and particularly since September 11, 2001, the banking industry has developed a heightened awareness of the need to comply with OFAC regulations. A representative of the securities industry stated that since September 11, 2001, the securities industry has also developed a heightened awareness of the need to comply with OFAC regulations. According to representatives of U.S. financial institutions we interviewed, they have undertaken an expensive and rigorous due diligence program, which can include installing

¹²31 C.F.R. §103.121-§103.123 (2003). Under the customer identification program rules (the "CIP Rules"), which became effective on June 9, 2003, a financial institution is not required to collect the identification verification information mandated by the CIP Rules with respect to persons with accounts existing prior to the effective date of the CIP Rules, provided that the financial institution has a "reasonable belief" that it knows the true identity of those persons.

monitoring software and training employees to detect names of targeted individuals and entities.

To comply with OFAC's regulations, including orders to freeze assets and block transactions, the larger financial institutions whose representatives we interviewed used filtering and interdiction software. Representatives of these institutions stated that a large number of transactions initially blocked by their software are "false positives." This means that the software has blocked transactions of entities with names similar to those on the SDN list that should not be blocked because the entities are not those on the SDN list. The representatives we interviewed stated that OFAC's SDN list contains names with multiple spellings and, in some cases, does not include identifying information such as an address or date of birth. This situation requires the financial institution to conduct additional research to determine if the transactions involving those entities should be blocked. The verification process takes time, however, and may lead to delays in processing legitimate transactions. OFAC recognizes that a lack of identifying information is a challenge for financial institutions and has worked to increase the amount of identifying information it provides to financial institutions.

An official from a trade group representing independent community banks stated that because its members are smaller banks with fewer customers, they generally use a manual process to comply with OFAC's regulations. Members manually compare updates to the SDN list with lists of accounts maintained by the banks and transactions occurring at the banks over a specified period. Officials at the trade group noted that managers of most independent community banks are familiar with their customers and are thus likely to detect suspicious or unusual transactions without the use of filtering and interdiction software. However, because OFAC is continuously updating its SDN list, it can be difficult and time consuming to manually screen transactions against the list. Financial institution officials stated that an institution's decision whether to use software or a manual process to comply with OFAC regulations is a business decision that the institution must make based on its perceived risk of holding accounts or processing transactions of those on the SDN list.

Representatives of financial institutions also noted that the OFAC SDN list does not contain the name of every individual or entity subject to OFAC regulations. For example, the U.S. sanctions program against Iran requires bank transactions relating to goods or services of Iranian origin or transactions controlled by the government of Iran to be rejected. It is

difficult for financial institutions to determine if an entity is owned or controlled by the government of Iran. Some commercial software vendors employ staff to research data available from the State Department, Central Intelligence Agency, and other public sources. These staff update their database with the names of entities known to be owned or controlled by affected governments, or the names of government officials in countries where the sanctions program covers government officials.

Domestic Laws of Foreign Countries Sometimes Prohibit Freezing and Transferring Assets Located in U.S. Financial Institutions Overseas

The laws of some foreign countries where branches of U.S. financial institutions are located prohibit freezing of targeted assets under U.S. unilateral sanctions. In the case of multilateral sanctions, they may also prohibit the transfer of assets to a new government of a targeted regime. According to OFAC officials, in the case of U.S. unilateral sanctions, U.S. laws may conflict with the laws of the host country and thereby complicate the recovery process. U.S. branches of financial institutions might be exposed to legal action by the account holders for blocking financial transactions overseas. For example, a U.S. bank in the United Kingdom was ordered by a British court to release a Libyan bank's assets blocked under U.S. unilateral sanctions in 1986. The United States subsequently authorized the release of the assets. According to an OFAC official, the process for recovering assets subject to multilateral sanctions is usually easier because these sanctions require international compliance.

OFAC's jurisdiction extends to all U.S. persons, which includes U.S. citizens and permanent resident aliens, companies located in the United States, overseas branches of U.S. companies, and, in some instances, overseas subsidiaries of U.S. companies. If these U.S. persons are located in a foreign country, they are also subject to the local laws and regulations of that country. In some instances, foreign laws conflict with OFAC regulations. According to OFAC, in these instances and depending on the circumstances, (1) the United States works diplomatically to encourage the foreign governments to allow U.S. financial institutions to comply with OFAC regulations to freeze and, in some cases, transfer the assets; or (2) OFAC issues a license authorizing the financial institution to comply with local law.

OFAC's Ability to Monitor Financial Institutions' Compliance with Its Regulations Is Limited

OFAC's ability to monitor financial institutions' compliance with its regulations, including orders to freeze assets and block transactions, is limited because, although financial institutions are required to comply with OFAC regulations, OFAC does not have supervisory authority over them. Thus, OFAC relies on financial institution regulators to monitor financial institutions' OFAC compliance programs through their examinations.¹³ OFAC identifies transactions of U.S. persons that involve violations of its regulations primarily through mandatory reports it receives from financial institutions on transactions that have been blocked. In a few cases, OFAC also learns about a financial institution's own violations through "self-disclosure" by the financial institution.

OFAC Identifies Violations of Its Regulations Primarily through Reports It Receives from Financial Institutions

According to OFAC officials, the primary way OFAC learns about violations of its regulations is through their review of mandatory reports filed by financial institutions. When a transaction processed through an institution is determined to be a "true hit" against the SDN list, it must, according to law, be blocked. The institution is required to file a report of this blocking with OFAC within 10 business days. These mandatory reports include such information as payment instructions for a funds transfer. According to OFAC officials, OFAC staff review these mandatory reports and, in every case where there has been an indication that a U.S. party may have acted inappropriately (such as where one bank that processes a transaction for another fails to block a funds transfer), OFAC responded by issuing an administrative subpoena for additional details, referring the institution for penalty action, issuing a cease and desist order, or sending a warning letter. According to OFAC, in every instance where a U.S. bank has acted inappropriately, OFAC has sent information regarding the transaction to the appropriate financial regulator. In a limited number of instances, OFAC learns about violations of its regulations through "self-disclosure" by financial institutions. Both OFAC and the financial institution representatives we interviewed stated that these self-disclosures often involve inadvertent violations of OFAC regulations, such as when a financial institution mistakenly processes a wire transfer it should have blocked. These improper transactions also come to light when a second

¹³Bank regulators currently examining U.S. banks for their compliance with OFAC regulations include the Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Reserve Board, Federal Deposit Insurance Corporation, and National Credit Union Administration. Securities regulators currently examining U.S. securities firms for their compliance with OFAC regulations include the Securities and Exchange Commission, New York Stock Exchange, and National Association of Securities Dealers.

institution involved in the wire transfer subsequent to the first institution through which the wire transfer was sent blocks the transfer and notifies OFAC in accordance with OFAC regulations, thus putting OFAC on notice of the first institution's failure to block.

The financial regulatory officials we interviewed stated that, as a matter of safety and soundness or compliance, they regularly examine financial institutions subject to their supervision to evaluate the sufficiency of the institution's policies, procedures, and systems to ensure compliance with OFAC regulations. When deficiencies in such policies, procedures, and systems are observed, the financial regulators take the appropriate supervisory action. Financial regulators stated they are unlikely to detect specific violations of OFAC regulations during their examinations unless such violations are apparent from transaction testing (i.e., testing individual transactions for compliance with foreign sanctions). If OFAC violations are identified during an examination, the regulators said that they direct the institution to contact OFAC immediately, and in situations involving enforcement actions, the regulators contact OFAC and share pertinent information.

Treasury Has Not Acted on an Inspector General Recommendation to Seek Legislative Authority to Increase OFAC's Access to Bank Regulators' Examinations

In April 2002, Treasury's Office of Inspector General (OIG) reported that OFAC's ability to monitor financial institution compliance with its regulations is hampered because the varied legislation under which OFAC operates does not provide it with the authority to proactively monitor financial institution compliance with foreign sanctions.¹⁴ In its report, OIG made two recommendations to Treasury related to OFAC's monitoring of financial institution compliance. OIG recommended that Treasury inform Congress that (1) OFAC lacks sufficient authority to ensure financial institution compliance with foreign sanctions and (2) OFAC's ability to ensure financial institution compliance with sanctions would be enhanced by ensuring that bank regulators share information from their examinations with OFAC. OIG stated that the second recommendation could be accomplished by amending the Right to Financial Privacy Act to include OFAC in the definition of "bank regulator" for the purpose of

¹⁴U.S. Department of the Treasury, Office of Inspector General, *Foreign Assets Control: OFAC's Ability to Monitor Financial Institution Compliance Is Limited Due to Legislative Impairments* (Washington, D.C.; Apr. 26, 2002).

allowing bank regulators to share information with OFAC.¹⁵ In response, OFAC officials agreed that its current legislative authority could be improved in terms of the information shared by bank regulators but stated that, despite statutory limitations, OFAC and the financial regulators have created an adequate compliance system.

In December 2003, the Chairman and Ranking Minority Member of the Senate Finance Committee wrote to the Director of OFAC and asked him to explain and clarify OFAC's position on the second OIG recommendation. They noted that OFAC's Director had previously stated that the recommendation is a "good first step." In his February 2004 response, the OFAC Director stated that OFAC has engaged in discussions with Treasury about the desirability of adopting this recommendation and that Treasury continued to review whether certain changes in the technical definitions of the Right to Financial Privacy Act would further enhance OFAC's ability to ensure compliance. However, as of August 2004, Treasury had not acted on OIG's recommendation.

Mechanisms the United States Has Used to Recover Iraqi Assets Could Be Applicable in Future Efforts

The United States has invoked domestic legal authorities and international obligations and used coordinating bodies in its recent efforts to recover Iraqi assets; some of these mechanisms could be applicable to future efforts. Some mechanisms identified by U.S. officials have advanced U.S. efforts to recover assets; others have been less successful than initially expected. Some mechanisms initially developed to combat money laundering and terrorist financing also have applicability to foreign regime asset recovery. Other mechanisms were not initially used in U.S. efforts to recover Iraqi assets and their use remains limited.

¹⁵The Right to Financial Privacy Act, 12 U.S.C. 3401-3418, with certain exceptions, prohibits agencies from transferring to another agency financial records originally obtained in compliance with the act that can be identified with the financial records of a particular customer. The act contains an exception that allows supervisory agencies, including financial institution regulators, to share customer financial records.

The United States Has Used Legal Authorities, International Obligations, and Coordinating Bodies to Recover Iraqi Assets

The United States has invoked domestic legal authorities and international obligations and used coordinating bodies in its efforts to recover Iraqi assets. Legal authorities and international obligations that the United States invoked in pursuit of Iraqi assets include IEEPA and U.N. Security Council resolutions respectively. Although there has been some success in bringing about the return of Iraqi assets, multilateral implementation of U.N. Security Council Resolution 1483 has faced challenges that have limited its effectiveness. The working group the United States established to coordinate the U.S. effort to recover Iraqi assets might be used as a model for future efforts, but the U.S. government has not documented the mechanisms used in past efforts that could serve as an evaluative basis and guide for future efforts.

IEEPA and USA PATRIOT Act Allowed the United States to Vest Iraqi Assets

In October 2001, section 106 of the USA PATRIOT Act (P.L. 107-56), amended section 203 of IEEPA (50 USC 1702) to authorize the President, when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, to confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that the President determines has planned, authorized, aided, or engaged in such hostilities or attacks. Before the adoption of section 106, the President could confiscate assets under the Trading with the Enemy Act, but only after a formal declaration of war.¹⁶ The President invoked section 203 of IEEPA when he issued a March 20, 2003, executive order vesting assets of the former Iraqi regime. The executive order allowed the United States to vest about \$1.9 billion of frozen Iraqi assets and transfer them to the appropriate authorities for use in Iraq.

May 2003 U.N. Resolution Requiring Members to Transfer Frozen Assets to Iraq Has Not Yet Achieved Its Goals

The United States worked with the U.N. Security Council to pass Resolution 1483 on May 23, 2003, to pave the way for the transfer of Iraqi assets held in other countries to the DFI. However, for a variety of reasons, implementation of the resolution has not yet resulted in the transfer of all frozen assets back to Iraq. U.S. officials did not anticipate the extent of delays in returning the Iraqi assets to the DFI due to existing claims against the assets and the domestic authorities of countries holding the assets. State Department officials stated that they used experience from past U.N. Security Council resolutions to help develop Resolution 1483.

¹⁶Section 106 also amended IEEPA to protect the confidentiality of classified information submitted in court in cases involving national security or terrorism.

Treasury and State Department officials said that although they anticipated some difficulties, they thought Resolution 1483 would facilitate the recovery and transfer of frozen assets more quickly than it did because it contained a provision they believed would facilitate the transfer of Iraqi assets to the DFI. However, other countries' domestic legal authorities have slowed asset transfers in some instances. Treasury and State officials stated that they worked to find alternative means of facilitating countries' transfer of assets to the DFI in instances where a lack of legal authorities has been a problem. However, as of June 2004, other countries had transferred about \$847 million of the \$3.7 billion in frozen funds worldwide. Large amounts of frozen assets had not been transferred from some of the countries.

Paragraph 23 of Resolution 1483 directs member states to freeze and transfer funds "without delay" unless the funds are subject to a prior judicial, administrative, or arbitral lien or judgment. The paragraph further states that unless otherwise addressed, claims made by private individuals or nongovernmental entities on transferred funds may be presented to the government of Iraq. Paragraph 23 also provides that the funds generally enjoy privileges and immunities equivalent to those enjoyed by the United Nations. New or unsettled claims were supposed to be made to the internationally recognized representative government of Iraq. However, U.S. government officials stated that some U.N. members have had difficulty implementing Resolution 1483 due to, among other factors, the lack of (1) legal authority to implement it in their jurisdiction, (2) an OFAC-like government entity to assist in identifying assets, and (3) sophisticated financial systems to freeze assets. The existence of business community and third party claims has also complicated the process. Finally, according to officials at the U.S. Mission to the United Nations, some countries have expressed concern over the lack of transparency of the DFI. As a result, they have been reluctant to transfer assets to it. Taken together, these challenges have decreased the immediate effectiveness of Resolution 1483 and have hindered the United States and others in the international community in implementing the resolution.

U.S. Government Formed the Iraqi Assets Working Group to Coordinate U.S. Efforts to Recover Iraqi Assets

Established in March 2003, the Iraqi Assets Working Group has focused on coordinating asset recovery efforts for Iraq. Treasury leads the working group. Its present members include officials from the Departments of State, Justice, Defense, and Homeland Security; law enforcement agencies and the intelligence community; and the National Security Council. The former CPA was also a member during the time of the CPA's existence. The

working group has brought together expertise from across the government to coordinate the U.S. government's efforts to recover Iraqi assets. According to public statements, the working group's goals are to

- exploit documents and key financial figures in Iraq to better understand fund flows;
- secure the cooperation of jurisdictions through which Iraqi funds have flowed so that working group members can exploit financial records and uncover the money trail;
- secure the cooperation of jurisdictions in which Iraqi assets may reside to locate, freeze, and repatriate the assets;
- engage the financial community in the hunt for Iraqi assets generally, and specifically to secure the cooperation of financial institutions through which Iraqi funds have flowed or still may reside;
- develop a system to facilitate the fluid repatriation of funds; and
- prepare for potential sanctions against uncooperative jurisdictions and financial institutions.

Little Documentation of Past U.S. Government Asset Recovery Efforts Is Available to Guide Future Asset Recovery Efforts

Neither Treasury nor State Department officials we interviewed knew whether the U.S. government had used a similar coordinating body for any of its previous asset recovery efforts. These agency officials did not have any documentation of mechanisms used in past efforts. In addition, one State official stated that when he started to work on the effort to recover Iraqi assets, he found little documentation of prior efforts to guide him.

According to OFAC officials, once a sanctions program is terminated, they no longer maintain historical information on it. When we asked OFAC officials for documentation of their past freezing and transferring regulations and the results of these efforts, they were unable to respond in a timely manner.

Both Treasury and State officials have stated that they believe the collective efforts to recover Iraq's assets, including efforts undertaken as part of the working group, afford the United States an opportunity to develop and institutionalize lessons learned for future recovery efforts. Treasury officials stated that they have begun to use the working group as a

model for new asset recovery efforts and are considering creating an umbrella interagency mechanism to oversee future efforts.

Mechanisms Developed to Combat Money Laundering and Terrorist Financing Strengthen Financial Systems Worldwide

Some mechanisms that were initially developed to combat money laundering and terrorist financing may facilitate foreign regime asset recovery by strengthening financial systems worldwide. In one instance, a USA PATRIOT Act provision had direct applicability and was used to sever a foreign bank's access to the U.S. financial system. Other USA PATRIOT Act provisions have a more indirect effect on asset recovery by strengthening U.S. financial institutions' anti-money laundering systems and making it more difficult to hide assets. U.S. officials stated that other mechanisms, such as the Financial Action Task Force (FATF)¹⁷ and technical assistance the U.S. government provides to other countries to strengthen their anti-money laundering systems, help strengthen countries' financial systems and thus indirectly facilitate asset recovery.

Some USA PATRIOT Act Provisions May Facilitate Asset Recovery by Making It More Difficult to Hide Assets in the U.S. Financial System

Title III of the USA PATRIOT Act contains expanded provisions of U.S. law to prevent, detect, and prosecute terrorist financing and international money laundering at financial institutions already covered by prior laws and extended these requirements to other financial service providers not covered under prior laws.¹⁸ Treasury officials believe that a number of the act's provisions have a preventive effect that strengthens the anti-money laundering safeguards of financial institutions and thus facilitates the recovery of foreign regimes' assets. More generally, to the extent that the act's provisions help strengthen the anti-money laundering systems of U.S. financial institutions, increase transparency, enhance customer due diligence, and increase reporting of suspicious financial activity, the provisions make it more difficult to use the U.S. financial system to hide illicit funds.

In May 2003, the United States used one section of the act to discourage a foreign bank from illegally holding Iraqi assets. Section 311 of the act authorizes the Treasury Department to designate specific foreign financial institutions, jurisdictions, transactions, or accounts to be of "primary

¹⁷FATF is an intergovernmental policy body focused on combating money laundering and terrorist financing.

¹⁸The International Money Laundering and Financial Anti-Terrorism Act of 2001, Title III, USA PATRIOT Act, Pub. L. No. 107-56.

money laundering concern.” Under this section, Treasury may require domestic financial institutions with links to jurisdictions or institutions of “primary money laundering concern” to take specific measures, such as increased record keeping. This section also allows the United States to restrict or prohibit access to the U.S. market. According to Treasury officials, financial institutions may stop dealing with other financial institutions located in a jurisdiction of “primary money laundering concern” to avoid the increased record-keeping requirements established by Section 311.

In May 2004, under Section 311, Treasury issued a notice of proposed rule making to impose “special measures” against a Syrian bank as a “financial institution of primary money laundering concern.” These special measures will include severing correspondent accounts with the bank.¹⁹ Treasury based this action, in part, on its belief that the institution had been used by terrorists and to launder proceeds from the illicit sale of Iraqi oil.

Treasury officials stated that other USA PATRIOT Act provisions could facilitate asset recovery efforts in the future. For example, Treasury officials stated that Section 312 regulations, when finalized, will increase the due diligence that financial institutions are required to exercise with regard to certain accounts of foreign financial institutions or wealthy foreign individuals. According to a Treasury official, one collateral benefit of this provision has been the creation of databases to identify “politically exposed persons” and their associates.²⁰

FATF and Technical Assistance
to Help Countries Combat
Money Laundering and Terrorist
Financing Indirectly Facilitate
Asset Recovery

State and Treasury officials noted that FATF has played a part in foreign regime asset recovery through its role of identifying international best practices and issuing standards. State Department officials said that the United States’ involvement in FATF has strengthened the ability of countries to implement asset freezes. Treasury officials agreed with State on the indirect role FATF plays and stated that some of the best practices adopted by FATF could have relevance to asset recovery efforts by enhancing other countries’ abilities to recover assets. Treasury officials

¹⁹A correspondent account is an account established by a financial institution for a foreign bank to receive deposits and make payments or other disbursements on behalf of the foreign bank, or to handle other financial transactions related to the foreign bank.

²⁰The term “politically exposed persons” applies to persons who perform important public functions for a state. These persons can include heads of state, government and cabinet ministers, senior judges, and members of ruling royal families, among others.

also stated that Treasury has tried to encourage other countries through FATF to search for hidden Iraqi assets.

The United States has worked with FATF to adopt and implement measures designed to counter criminals' use of the financial system.²¹ In 1990, FATF produced a paper, "Forty Recommendations," intended to assist countries in their anti-money laundering efforts. These recommendations, which have been revised twice, were intended for universal application. FATF expects them to be accepted and implemented by governments wanting recognition in the international community as jurisdictions that combat money laundering. Following the terrorist attacks of September 11, 2001, FATF issued new international standards to combat terrorist financing—the "Eight Special Recommendations." The objective of these measures, when implemented by countries worldwide, is to deny terrorists and their supporters access to the international financial system by encouraging financial institutions to implement record keeping and other safeguards. The FATF recommendations on both money laundering and terrorist financing are designed to assist countries in making their financial systems more transparent and less vulnerable to misuse. FATF encourages nonmembers to implement both the FATF Forty Recommendations on anti-money laundering and the Eight Special Recommendations on anti-terrorist financing.

Treasury officials stated that, in their view, FATF, in and of itself, was not a mechanism for recovering foreign regimes' assets. The Treasury representative to FATF stated that FATF is more of a process by which countries cooperate with each other than an organization with extensive personnel to recover assets. It has a small secretariat and relies on members to do the majority of its work. Treasury's representative to FATF commented that the United States is also looking into ways for FATF to maintain a database of information on members' laws relating to anti-money laundering and bank secrecy. The representative was not aware of an effort to collect information on laws related to foreign regime asset recovery but stated that this is a task FATF might be able to do. However, he cautioned that FATF still had the limitations cited above.

²¹FATF was established in 1989 as a policy-making body that works to generate the political will to bring about national legislative and regulatory reforms in the areas of anti-money laundering and anti-terrorist financing. Its current mandate extends through the end of 2004, but its work will continue if the member governments agree that this is necessary.

In addition to its participation in FATF, the U.S. government has provided technical assistance to governments to improve their capacity to combat money laundering and terrorist financing. State officials stated that technical assistance of this type could help countries recover assets of foreign regimes within their borders because it helps them develop the necessary legal authorities and investigative abilities to locate hidden assets.

Use of Other Mechanisms for Asset Recovery Has Been Limited

The United States' use of some other mechanisms to recover foreign regimes' assets has been limited. For example, Treasury officials stated that the Egmont Group provides a valuable channel for exchanging information with other countries.²² However, the Egmont Group was not fully integrated in the search for Iraqi assets. Also, although not involved in Iraq, private sector firms have played a role in past asset recovery efforts and could potentially be used in future efforts.

Treasury Did Not Initially Use the Egmont Group to Obtain Information

Treasury officials stated that the Egmont Group provides a valuable channel through which countries, through their financial intelligence units (FIUs), can exchange financial investigative information. FIUs are specialized governmental agencies that countries have created as they develop systems to combat money laundering.²³ The U.S. government did not initially use the Egmont Group in its efforts to recover Iraqi assets because, according to Treasury officials, Treasury and State decided to work diplomatically through high-level financial ministry contacts. Treasury officials stated that this method of exchanging information worked well.²⁴ In the Iraq case, Treasury officials stated they already knew where many of the hidden Iraqi assets were located. They noted that Egmont is primarily intended for use in facilitating the exchange of information in ongoing U.S. and foreign criminal investigations. The officials noted that, with Iraq, there was no such investigation. In March

²²The Egmont Group began in 1995 when a number of financial intelligence units (FIUs) established an informal group to cooperate on the exchange of law enforcement information. As of June 23, 2004, the Egmont Group had 94 members. The group is named for the location of the first meeting—the Egmont-Arenberg Palace in Brussels, Belgium.

²³Treasury's Financial Crimes Enforcement Network is the FIU for the United States.

²⁴The Treasury and State Departments are working with foreign governments to encourage them to transfer frozen Iraqi funds to the Development Fund for Iraq. According to State Department officials, since March 2003, State has sent more than 400 cables to other countries requesting that they transfer the Iraqi funds.

2004 congressional testimony, a Treasury official stated that the Egmont Group had been used more recently to exchange information related to the financial activities of the former Iraqi regime and to communicate specific Iraqi asset law enforcement-related inquiries to other countries.²⁵

U.S. Agencies Have Not Involved Private Sector Firms in Foreign Regime Asset Recovery Efforts

Private sector firms have played roles in some instances of foreign regime asset recovery through civil lawsuits, investigative efforts, or both; however, they have not played a role in recovering Iraq's assets. In cases where corrupt leaders have stolen from their countries, private sector firms have been hired to locate those assets and file suit to have the assets returned to their country of origin. Officials from firms involved in some of these efforts stated that they have developed considerable expertise that has allowed them to effectively recover assets. According to representatives of private law firms, civil litigation may be the most effective mechanism for recovering the stolen assets of corrupt government officials because such proceedings are public, serving to shame the individuals involved in stealing or concealing the assets.

Representatives of private sector firms cautioned that efforts of this sort face challenges that can limit the involvement of private sector firms in recovering assets. For example, locating assets and suing for their return is expensive. Countries differ significantly in the laws that apply to recovering a regime's assets, and pursuing assets in these countries would require expertise in the laws of each country. In many cases, the new government sues to recover assets. For example, in 1999, the government of Nigeria—after the 1998 death of General Sani Abacha, the former President—sought the return of assets stolen from the country during the Abacha regime. Nigeria had to hire those with the expertise to pursue the assets in the foreign countries in which they were invested. The legal requirements of other countries had to be met before the assets could be returned to Nigeria. Some countries required the posthumous criminal conviction of Abacha in Nigeria before funds that he had invested overseas could be returned. The case was resolved when the government of Nigeria negotiated a settlement with members of Abacha's family in which it agreed not to prosecute the family in exchange for some of the stolen funds.

²⁵U.S. Department of the Treasury, testimony of Juan C. Zarate, Deputy Assistant Secretary, Executive Office for Terrorist Financing and Financial Crimes, U.S. Department of the Treasury before the House Financial Services Subcommittee on Oversight and Investigations, March 18, 2004.

Cases that have involved private sector efforts include the following:

- In 1985, Congress retained a private firm to investigate reports that Philippines President Ferdinand Marcos and his wife had secretly amassed millions of dollars in private wealth. The investigation confirmed that the Marcoses held assets located in the United States and overseas that were worth almost a billion dollars.
- In 1986, the Haitian government hired a private firm to locate hundreds of millions of dollars appropriated by former dictator Jean-Claude “Baby Doc” Duvalier. The investigations led to the seizure of bank accounts in New York, London, Luxembourg, Paris, and Geneva.
- After the 1988 terrorist attack on Pan Am flight 103 over Lockerbie, Scotland, plaintiffs sued the government of Libya on behalf of the victims.²⁶ This resulted in a negotiated settlement in 2003.
- In 1990, the Kuwaiti government hired a private firm to investigate the financial network used by Saddam Hussein to hide assets in the West. The firm was able to link Hussein to millions of dollars in assets held in others peoples’ names in the United States and Europe, exposing some of his front companies and agents.

In the more recent case of Iraq, however, assets in the United States were vested and U.N. Security Council Resolution 1483 sought to protect assets in other countries from the types of claims that would result from civil suits. Private firm representatives stated that these actions removed the incentive for parties to pursue litigation. Treasury officials stated that U.S. government investigators were better positioned than the private sector to pursue Iraqi assets because they had access to classified information and the expertise to interpret what they found. They also stated, however, that private investigators might be useful in helping analyze large volumes of documents and other records.

Conclusion

The U.S. government, led by the Treasury and State Departments, has achieved important successes in its current effort to recover assets of the former Iraqi regime. However, the challenges it has faced in this and other

²⁶The party pursuing asset recovery can also be private citizens that have suffered injury from the actions of a regime.

asset recovery efforts have complicated the process and could be addressed in a number of ways. For example, improvement of the adequacy of account identifying information supplied by intelligence and law enforcement agencies could enable U.S. financial institutions to more accurately freeze assets in response to OFAC freeze orders in the future. Informing intelligence and law enforcement investigators of the kinds of information needed at the earliest possible stage and faster declassification of intelligence information could expedite the process.

The ability of OFAC, as the U.S. agency charged with administering and enforcing economic sanctions against targeted foreign regimes and other designated groups and individuals, to ensure financial institution compliance with its sanctions could be enhanced if financial regulators shared information from their examinations with OFAC. This information could assist OFAC in enforcing its regulations by alerting it to financial institutions at a higher risk of not complying with its regulations. Treasury has not acted on a recommendation made by its Office of Inspector General over 2 years ago to seek legislative authority that would facilitate OFAC's access to information from bank regulators' examinations.

Recent efforts to quickly recover assets of the former Iraqi regime have not been as successful as initially expected, in part, because of existing claims against the assets and because other countries' domestic legal authorities have impeded their ability to freeze and transfer assets of foreign regimes under various conditions, such as U.N. resolutions. U.S. officials have worked with some foreign governments to make the required legislative changes and have worked to devise alternative mechanisms for the assets to be transferred. Our efforts to obtain information on coordinating or other mechanisms used in past asset recovery efforts were unsuccessful, in part, because we found little documentation of these past cases. U.S. officials stated that they have learned a great deal in the Iraq case and that the mechanisms used in this effort could apply to future cases. Documenting the government's lessons learned from the Iraq case would provide a critical road map to ensure that the United States implements a thorough and well-considered asset recovery effort in the future.

Recommendations for Executive Action

To improve the U.S. government's readiness to move forward quickly in future asset recovery efforts, we are making three recommendations:

- The Departments of the Treasury and State should work with U.S. intelligence and law enforcement agencies to improve the accuracy and completeness of account identifying information needed by financial institutions to identify and freeze assets of foreign regimes.
- The Department of the Treasury should seek legislative authority, if necessary, to enhance OFAC's ability to ensure financial institution compliance with sanctions by allowing financial regulators to share complete information from their examinations with OFAC.
- The Departments of the Treasury and State should develop and document a compilation of lessons learned from the current effort to recover Iraq's assets that could assist in appropriately institutionalizing and leveraging all mechanisms available for future efforts.

Agency Comments and Our Evaluation

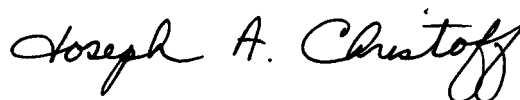
We received written comments on this report from the Departments of State and the Treasury. These comments and GAO's evaluation of them are reprinted in appendixes VI (State) and VII (Treasury). The Departments of Defense, Homeland Security, Justice, State, and the Treasury, the Securities and Exchange Commission, Office of the Comptroller of the Currency, and the Federal Reserve Board also provided technical comments that GAO discussed with relevant officials and included in the text of the report, where appropriate.

State agreed with our recommendations regarding the need to improve the accuracy and completeness of account identifying information and document lessons learned from the current effort to recover Iraq's assets. State stated that it would continue to work with foreign governments, Treasury, and U.S. intelligence and law enforcement agencies to improve target identifiers. State also stated that it would be desirable to work with the Department of the Treasury as well with their Missions to the United Nations and Iraq to develop and document lessons learned that might serve as a guide to future efforts. Although Treasury did not comment directly on either of these recommendations, it stated that it will continue to strive, to the extent applicable and permitted by law, to overcome the challenges of repatriating assets presented by diverse international legal constraints.

With regard to whether it should seek a legislative change to allow financial regulators to share information from their examinations with OFAC, Treasury maintained that this issue has not affected the U.S. government's ability to recover regime assets but that further information sharing between OFAC and the regulators would be helpful. Treasury stated that it had discussed this issue with federal regulators and, based on these meetings, it is uncertain whether legislative changes are necessary to enhance information sharing between OFAC and the financial regulators. Treasury further stated that it expects that comprehensive arrangements will be in place shortly to enhance information sharing between OFAC and the financial regulators. We agree that further information sharing between OFAC and the financial regulators would be helpful, and we encourage Treasury to seek whatever legislative solutions are necessary to overcome any obstacles to further information sharing. We modified our recommendation to reflect Treasury's efforts and reaffirm the importance of ensuring that information sharing is enhanced.

Unless you publicly announce its contents earlier, we plan no further distribution until 30 days after the date of this report. At that time, we will send copies of this report to the Secretaries of Defense, Homeland Security, State, and the Treasury; the Attorney General; the Chairmen of the Federal Reserve Board and the Securities and Exchange Commission; the Comptroller of the Currency; and interested congressional committees. We will also make copies available to others on request. In addition, this report will be available at no cost on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact Joseph Christoff at (202) 512-8979 or Davi M. D'Agostino at (202) 512-8678. GAO contacts and key contributors to this report are listed in appendix VIII.



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International Affairs and Trade



Davi M. D'Agostino, Director
Financial Markets and Community Investment

Objectives, Scope, and Methodology

The objectives of our report were to (1) describe the approach the U.S. government uses to recover foreign regimes' financial assets, (2) examine the challenges the United States faces in recovering foreign regimes' assets, and (3) examine the mechanisms the United States has used to recover Iraqi assets and their applicability to future efforts.

To address all of these objectives, we interviewed key U.S. government officials from multiple U.S. government agencies. The agencies included

- the Department of the Treasury (Executive Office for Terrorist Financing and Financial Crimes; Office of Foreign Assets Control; Financial Crimes Enforcement Network; and Internal Revenue Service-Criminal Investigation);
- the Department of State (Bureau of Economic and Business Affairs; Bureau of International Organization Affairs; Bureau for International Narcotics and Law Enforcement Affairs; and United States Mission to the United Nations);
- the Department of Justice (Criminal Division's Asset Forfeiture and Money Laundering Section, Counterterrorism Section, and Office of International Affairs; Civil Division; and Federal Bureau of Investigation Terrorist Financing Operations Section and Legal Attaché Program);
- the Department of Homeland Security (Bureau of Immigration and Customs Enforcement); and
- the Department of Defense (Office of the Under Secretary of Defense for Policy and Defense Intelligence Agency).

To address our first objective of describing the approach the U.S. government uses to recover foreign regimes' assets and our second objective of examining the challenges the United States faces in recovering these assets, we reviewed documents from the U.S. government, the United Nations, and a nonprofit research organization, including testimonies, reports, and relevant laws. We also interviewed representatives of several large U.S. financial institutions responsible for complying with Treasury's Office of Foreign Assets Control's (OFAC) regulations to freeze assets and block transactions, two trade associations representing segments of the U.S. financial services industry, two financial regulatory agencies, and two self-regulatory organizations.

To address our third objective of examining the mechanisms U.S. officials identified for use in recovering Iraqi assets and their applicability to future efforts, we defined mechanisms to include legal authorities and coordinating bodies that Treasury Department officials said have been or could be used for asset recovery. Relevant legal authorities we reviewed included the International Emergency Economic Powers Act (IEEPA), sections in Titles I and III of the USA PATRIOT Act,¹ and United Nations Security Council Resolutions 1267, 1373, 1483, 1518, and 1546. Our discussion of foreign laws and regulations is based on interviews and other secondary sources. Furthermore, we reviewed documents describing the mission and operations of coordinating bodies that could be used to recover foreign regimes' assets, such as the mission statements of the Egmont Group and Financial Action Task Force.

To identify and describe the role of the Iraqi Assets Working Group, we interviewed officials from the Department of the Treasury and relied on public statements describing this group's goals and activities. To identify and describe U.S. efforts to provide technical assistance to other countries, we interviewed officials from the Department of State and reviewed the United States' report to the U.N. Security Council committee established to oversee implementation of Resolution 1267. Finally, to determine the role and use of private firms in efforts to recover assets, we interviewed representatives of law firms and a consulting firm that have been involved in past cases of asset recovery. We discussed with these representatives not only their involvement in past cases, but also the extent to which they have been or thought they could be used in the current case involving Iraq.

To help describe the activities of the Iraqi assets working group, a key coordinating body used to recover the assets of the former Iraqi regime, we requested the minutes of the working group's meetings. Treasury officials noted that the working group's minutes were classified and also related to matters that remained sensitive. As a result, they did not provide us with these minutes. Due to the sensitivity of the matters in this particular situation and the nature and timing of our engagement, we relied on public statements and interviews with Treasury officials describing the group's goals and agency officials' general descriptions of the working group's minutes to meet our reporting objectives.

¹Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, 115 stat. 272 (2001).

Appendix I
Objectives, Scope, and Methodology

We conducted our work in Washington, D.C., and New York City from May 2003 to August 2004 in accordance with generally accepted government auditing standards.

Targeted Foreign Regimes Since 1979

The United States, acting unilaterally, through the United Nations (U.N.), or both, has sought to freeze the assets of targeted foreign regimes to achieve a range of foreign policy and national security goals. The table below identifies the foreign regimes against which asset freezing sanctions were first imposed in 1979 or later (even if those sanctions were subsequently lifted), the time frame in which the asset freeze was or is in effect, the body (United States, United Nations, or both) that imposed the freeze, U.S. executive orders used to implement the freeze, stated reasons for the freeze, and amount of assets frozen by the United States as of June 2004.¹

Table 1: Targeted Foreign Regimes Since 1979

| Foreign regime | Time frame | Body imposing asset freeze | U.S. executive orders used to implement freeze | Stated reasons for freeze | Amount of assets frozen by the United States ^a |
|-----------------------|---------------------------|--|---|--|---|
| Afghanistan (Taliban) | 1999-present ^b | Both the United States (see executive orders) and the United Nations in Resolutions 1267, 1333, 1373, 1390, and 1455 | Executive Orders 13129 and 13224 | To prevent access to the assets by the Taliban, a group not officially recognized as the formal government of Afghanistan by the U.S. or U.N. and to pressure the Taliban to extradite Osama bin Laden | \$217 million ^c |
| Angola (UNITA) | 1993-2003 | Both the United States (see executive orders) and the United Nations in Resolutions 1173 and 1176 | Executive Orders 12865 and 13098 | To preserve the unity, sovereignty, and territorial integrity of Angola and promote international peace and stability in the region | No amounts reported |
| Haiti | 1991-1994 | Both the United States (see executive orders) and United Nations in Resolutions 841 and 917 ^d | Executive Orders 12775, 12853, 12917, and 12920 | To return democracy to Haiti and democratically elected President Jean-Bertrand Aristide to his office | \$121 million at the time of release ^e |

¹This table does not include the regimes of North Korea and Cuba, even though the United States still has active asset freezes against them. Those freezes were authorized in 1950 and 1963, respectively, under the Trading with the Enemy Act, while the freezes against the regimes listed in this table have been authorized under the International Emergency Economic Powers Act.

**Appendix II
Targeted Foreign Regimes Since 1979**

(Continued From Previous Page)

| Foreign regime | Time frame | Body imposing asset freeze | U.S. executive orders used to implement freeze | Stated reasons for freeze | Amount of assets frozen by the United States^a |
|-----------------------|-----------------------------------|---|---|--|---|
| Iraq | 1990-present | Both the United States (see executive orders) and the United Nations in Resolutions 661, 1483, and 1546 | Executive Orders 12722, 12724, and 13315 | To end Iraq's invasion of Kuwait and restore sovereignty, independence, and territorial integrity to Kuwait; disarm Iraq of weapons of mass destruction; and assist in the reconstruction of Iraq | \$2.1 billion ^f |
| Libya | 1986-present | Both the United States (see executive orders) and the United Nations in Resolution 883 ^g | Executive Order 12543 | To end Libya's support for international terrorism | \$1.25 billion ^h |
| The former Yugoslavia | 1992-1996; 1998-2003 ⁱ | Both the United States (see executive orders) and the United Nations in Resolution 942 ^j | Executive Orders 12808, 12846, 13088, 13121 | To preserve the territorial integrity of all states of the former Yugoslavia; reaffirm the need for a lasting peace settlement by all Bosnian parties; promote international peace and security; provide stability in the region; and maintain progress in Bosnia and Herzegovina in implementing the Dayton peace agreement | \$237.6 million ^k |
| Burma | 2003-present | United States ^l | Executive Order 13310 | To take additional steps with regard to the Burmese government's repression of the democratic opposition | Data not available ^m |
| Zimbabwe | 2003-present | United States ⁿ | Executive Order 13288 | To respond to certain members of the Zimbabwean government undermining democracy, the rule of law, and political and economic stability in the region | \$800,000 |

**Appendix II
Targeted Foreign Regimes Since 1979**

(Continued From Previous Page)

| Foreign regime | Time frame | Body imposing asset freeze | U.S. executive orders used to implement freeze | Stated reasons for freeze | Amount of assets frozen by the United States ^a |
|----------------|-------------------------|----------------------------|--|--|---|
| Iran | 1979-1981; 1995-present | United States | Executive Orders 12170, 12959, and 13059 | 1979-1981: to force Iran's release of American hostages and settle expropriation claims. 1995-present: to end Iran's support for international terrorism and pursuit of weapons of mass destruction | \$23.3 million ^o |
| Panama | 1988-1989 | United States | Executive Order 12635 | To remove General Manuel Noriega from power | \$296.8 million ^p |
| Sudan | 1997-present | United States | Executive Order 13067 | To end Sudan's support for international terrorism, its efforts to destabilize neighboring governments, and the prevalence of human rights violations | \$28.4 million ^q |
| Syria | 2004-present | United States | Executive Order 13338 | To end Syria's support of terrorism, continued occupation of Lebanon, pursuit of weapons of mass destruction and missile programs, and subversion of United States and international efforts to stabilize and reconstruct Iraq | \$0 ^r |

Source: United Nations, U.S. Treasury Department Office of Foreign Assets Control, and Institute for International Economics.

^aTreasury's Office of Foreign Assets Control maintains data on the amount of assets frozen in all blocking programs. These amounts are included in the Treasury's annual Terrorist Assets Report if a regime is determined by the Secretary of State to be a state sponsor of terrorism.

^bSanctions against the government of Afghanistan have been lifted. However, a freeze of the assets associated with the Taliban, Osama bin Laden, and al Qaeda remain in effect.

^cThese assets were unfrozen and released to the Afghan Interim Authority in January 2002.

^dThe United States began asset freezing sanctions against Haiti unilaterally in 1991 and the U.N. followed with multilateral sanctions in 1993.

^eOver \$55 million was released during the period of sanctions at the request of the recognized government of Haiti, and with the certification of the Department of State, for expenditures related to the operations of the Haitian government in the United States and worldwide.

^f\$1.93 billion was vested under Executive Orders 13290 and 13315. Approximately \$120 million was paid out in claims and another \$40 million remains blocked.

^gThe United States began asset freezing sanctions against Libya unilaterally in 1986 and the U.N. followed with multilateral sanctions in 1993. Currently, only limited U.S. sanctions remain in effect against Libya.

Appendix II
Targeted Foreign Regimes Since 1979

^hOf this amount, \$5.4 million is blocked in U.S. banks' foreign branches.

ⁱCertain diplomatic and consular assets and assets of the National Bank of Yugoslavia remain blocked.

^jThe United States began asset freezing sanctions against the former Yugoslavia unilaterally in 1992, and the U.N. followed with multilateral sanctions in 1994 that were lifted in 1996. The United States' asset freezing sanctions were lifted in 1996. However, the United States imposed another round of unilateral sanctions from 1998 to 2003.

^kThis amount represents assets of the National Bank of Yugoslavia returned to the successor states of the former Socialist Federal Republic of Yugoslavia. In addition, amounts representing blocked wire transfers were released by General License, and the New York State Banking Department was licensed to take possession of assets of Beogradska Banka, New York Agency and Jugobanka, New York Agency as part of bankruptcy proceedings against the two institutions.

^lThe European Union imposed multilateral asset freezing sanctions against Burma in 2000, prior to the United States' asset freezing action in 2003.

^mThe sanctions became effective in July 2003, just after the cut off date for U.S. holders of property to report blocked property. The most recent report was due June 30, 2004.

ⁿThe European Union imposed multilateral asset freezing sanctions against Zimbabwe in 2002, prior to the United States' asset freezing action in 2003.

^oThis figure represents the amount—mostly diplomatic and consular property—remaining blocked from the 1979-1981 sanctions. During the period of the 1979-1981 sanctions, over \$12 billion in Iranian property was blocked.

^pThe assets were unfrozen and released to the legitimate government of Panama in 1989.

^qOf this amount, \$100,000 is blocked in U.S. banks' foreign branches.

^rNo Syrian individuals or entities had been formally targeted by the United States for an asset freeze as of June 2004. Therefore, no Syrian assets have yet been frozen.

Key U.S. Legal Authorities Used to Recover Foreign Regimes' Assets

International Emergency Economic Powers Act (IEEPA)

Provides broad authority to the President to declare a national emergency to deal with an unusual and extraordinary threat, which has its source in whole or in part outside the United States, to the national security, foreign policy, or economy of the United States (50 U.S.C. §§ 1701-06). The act gives the President substantial authority over foreign trade, including authority over property in which a foreign country or national thereof has any interest with respect to any property, subject to the jurisdiction of the United States (50 U.S.C. § 1702). In October 2001, section 106 of the USA PATRIOT Act (P.L. 107-56), amended section 203 of IEEPA (50 U.S.C. § 1702) to authorize the President to confiscate any property subject to the jurisdiction of the United States of a foreign person, organization or country that the President has determined to have planned or engaged in armed hostilities against the United States and vest all "right, title, and interest" in a designated agency or individual.

Trading with the Enemy Act of 1917 (TWEA)

Provides the President with authority under certain circumstances to confiscate and vest foreign assets subject to the jurisdiction of the United States, but only after a congressional declaration of war (50 U.S.C. App. §§1-44).

United Nations Participation Act (UNPA)

Authorizes the President to apply economic sanctions, including freezing of assets, called for by United Nations Security Council Resolution (22 U.S.C. § 287c).

National Emergencies Act (NEA)

Imposes procedural limitations on Presidential declarations of national emergency under which foreign assets have been blocked or frozen. A national emergency declared under the act automatically terminates on the anniversary of the declaration of the emergency unless the President publishes in the federal register and transmits a notice to Congress stating that the emergency continues in effect (50 U.S.C. §§ 1601-51).

Source: GAO.

Efforts to Recover Iraqi Assets

After Iraq invaded Kuwait in 1990, the United Nations imposed sanctions against the Iraqi regime; however, in 1996, the United Nations and Iraq agreed on the Oil for Food Program, thereby enabling Iraq to pay for humanitarian items. We estimated that between 1997 and 2002, Saddam Hussein's regime accumulated at least \$10.1 billion in surcharges on oil sales and illicit charges from suppliers exporting goods to Iraq through the Oil for Food program. In its recent efforts to recover assets of the former Iraqi regime worldwide, the U.S. government has engaged the services of a variety of U.S. agencies and recently developed domestic and international tools to recover these and other hidden assets. U.S. recovery efforts have had varying results.

Estimated Revenue Obtained Illegally by the Former Iraqi Regime Exceeds \$10 Billion

In August 1990, Iraq invaded Kuwait, and the United States froze Iraqi assets. Shortly after, the United Nations also imposed sanctions against the regime. Security Council Resolution 661, approved in 1990, prohibited all nations from buying Iraqi oil and selling Iraq any commodities except food or medicines. The resolution also required member states to block the transfer of Iraqi assets from their countries. The United States amended its sanctions consistent with the resolutions. Other nations similarly froze Iraqi government assets in their countries.

In December 1996, the United Nations and Iraq agreed on the Oil for Food Program, which allowed Iraq to sell a set amount of oil to pay for food, medicine, and infrastructure repairs. Iraq's oil revenue was placed in a U.N.-controlled escrow account. From 1997 through 2002, we estimate that the former Iraqi regime acquired \$10.1 billion in illegal revenues—\$5.7 billion in oil smuggled out of Iraq and \$4.4 billion in surcharges on oil sales and illicit charges from suppliers exporting goods to Iraq through the Oil for Food program.¹ This estimate is higher than our May 2002 estimate of

¹This estimate is in constant 2003 U.S. dollars.

\$6.6 billion² because it includes (1) oil revenue and contract amounts for 2002, (2) updated letters of credit from prior years, and (3) newer estimates of illicit commissions from commodity suppliers.

Oil was smuggled out through several routes, according to U.S. government officials and oil industry experts. Oil entered Syria by pipeline, crossed the borders of Jordan and Turkey by truck, and was smuggled through the Persian Gulf by ship. Jordan maintained trade protocols with Iraq that allowed it to purchase heavily discounted oil in exchange for up to \$300 million in Jordanian goods. Syria received up to 200,000 barrels of Iraqi oil a day in violation of the sanctions. Oil smuggling also occurred through Turkey and Iran.

In addition to revenues from oil smuggling, the Iraqi government levied surcharges against oil purchasers and commissions against commodity suppliers participating in the Oil for Food program. According to some Security Council members, the surcharge was up to 50 cents per barrel of oil and the commission was 5 percent to 15 percent of the commodity contract.

In our 2002 report, we estimated that the Iraqi regime received a 5 percent illicit commission on commodity contracts. However, a September 2003 Department of Defense review found that at least 48 percent of 759 Oil for Food contracts were potentially overpriced by an average of 21 percent.³ Food commodity contracts were the most consistently overpriced, with potential overpricing identified in 87 percent of the contracts by an average of 22 percent. The review also found that the use of middlemen companies potentially increased contract prices by 20 percent or more. Defense officials found 5 contracts that included “after-sales service charges” of between 10 percent and 20 percent.

In addition, interviews by U.S. investigators with high-ranking Iraqi regime officials, including the former oil and finance ministers, confirmed that the former regime received a 10 percent commission from commodity suppliers. According to the former oil minister, the regime instituted a fixed

²GAO, *Weapons of Mass Destruction: U.N. Confronts Significant Challenges in Implementing Sanctions Against Iraq*, [GAO-02-625](#) (Washington, D.C.: May 23, 2002).

³The Defense Contract Audit Agency and the Defense Contract Management Agency, *Report on the Pricing Evaluation of Contracts Awarded under the Iraq Oil for Food Program* (Washington, D.C.; Sept. 12, 2003).

10 percent commission in early 2001 to address a prior “compliance” problem with junior officials. These junior officials had been reporting lower commissions than what they had negotiated with suppliers and pocketing the difference.

The United Nations Security Council Has Adopted Three Recent Resolutions

The United Nations Security Council has adopted three recent resolutions regarding Iraq—1483, 1518, and 1546. The United States and other U.N. Security Council members adopted Resolution 1483 to assist in the reconstruction of Iraq and the establishment of a new Iraqi government. This resolution lifted trade sanctions initially imposed on Iraq in 1990; provided for the transfer of the U.N.’s Oil for Food Program to the Coalition Provisional Authority (CPA) over a 6-month period; sought to freeze assets of the former government of Iraq, Saddam Hussein, other senior officials, and their immediate families (the former regime); noted the establishment of a Development Fund for Iraq (DFI); and required all U.N. members to transfer assets frozen in their countries to the DFI. Unlike recent resolutions regarding the Taliban and terrorists worldwide, Resolution 1483 did not establish a committee to oversee its implementation. On November 24, 2003, the United States and other U.N. Security Council members adopted Resolution 1518, which established a committee to identify individuals and entities whose assets were to be frozen under Resolution 1483. On June 8, 2004, the U.N. Security Council adopted Resolution 1546, which anticipated the end of the occupation of Iraq, the dissolution of the CPA, and endorsed the formation of a sovereign interim Iraqi government.

U.S. Efforts to Recover Iraq’s Assets Involve Many Agencies and Use Recently Developed Domestic and International Authorities

The United States has tapped the services of several U.S. agencies and used recently developed U.S. and international authorities in its efforts to recover Iraqi assets worldwide. About 20 entities, including those of the Departments of Defense, Homeland Security, Justice, State, and the Treasury, intelligence agencies, law enforcement agencies, and the National Security Council, are involved in recovering Iraqi assets.

To lead the asset recovery efforts, the United States created an interagency coordinating body headed by the Department of the Treasury. This group, the Iraqi Assets Working Group, has developed a strategy to identify, freeze, seize, and transfer former regime assets to Iraq. The working group’s goals include exploiting documents and key financial figures or information on fund flows, working with other jurisdictions where funds are located to recover assets, working with the financial community, developing a system

to facilitate fund repatriation, and prepare for potential sanctions against uncooperative jurisdictions and financial institutions. The working group is leveraging the expertise of U.S. officials involved in efforts to recover assets of terrorists and money launderers.

Provisions in the USA PATRIOT Act amended IEEPA to allow the President to confiscate foreign property subject to U.S. jurisdiction in times of “ongoing hostilities” or if the United States is attacked. These provisions gave the President authority, invoked through an executive order, to confiscate the property of the former Iraqi regime and to vest title to these assets. In addition, according to the State Department, U.N. Security Council Resolution 1483 was an important vehicle for requiring other countries to transfer assets to Iraq. On May 22, 2003, the U.N. Security Council adopted Resolution 1483, which (1) noted the establishment of the DFI, a special account in the name of the Central Bank of Iraq; and (2) required member states to freeze and immediately transfer to the DFI all assets of the former Iraqi government and of Saddam Hussein, senior officials of his regime, and their family members. The resolution also included a unique immunity provision to protect the assets from new claims.

U.S. Efforts to Recover the Former Iraqi Regime’s Assets Have Had Varying Results

In 2003, the U.S. government quickly vested Iraq’s assets held in the United States and transferred them to Iraq. Similarly, the U.S. military seized assets recovered in Iraq of the former Iraqi regime. The CPA has used most of the vested and seized assets for emergency salary and pension payments to Iraqi civil servants, reconstruction projects and other ministry operations. U.S. officials noted that some other countries’ efforts to transfer Iraqi funds have been slowed by their lack of implementing legislation.

The United States Transferred Nearly \$1.9 Billion in Vested Assets to Iraq

On August 2, 1990, in compliance with a Presidential executive order, Treasury’s OFAC issued regulations to financial institutions requiring them to freeze Iraqi assets in the United States. More than 30 banks in the United States identified and froze accounts with \$1.4 billion in Iraqi assets.⁴ These institutions held assets in accounts that accumulated interest.

⁴In addition, according to OFAC, more than \$480 million was frozen in U.S. financial institutions abroad.

In March 2003, the President invoked authorities, including the enhanced authority in IEEPA, as amended by provisions in the USA PATRIOT Act, and issued an executive order confiscating Iraqi government assets held by U.S. financial institutions and vesting them in the U.S. Treasury. The order resulted in the vesting in the Treasury of about \$1.9 billion of the former regime's assets in the names of the government of Iraq, the Central Bank of Iraq, Rasheed Bank, Rafidain Bank, or the State Organization for Marketing Oil. All U.S. financial institutions holding such funds were ordered to transfer those funds to the Federal Reserve Bank of New York, and 23 banks did so by electronically transferring the funds. Between May and December 2003, the United States transferred more than \$1.7 billion to Iraq and \$208 million to the DFI.

With respect to the \$1.7 billion transferred to the CPA, according to Treasury and Federal Reserve officials, Treasury instructed the Federal Reserve Bank of New York to release portions of the funds to the Department of Defense (DOD) upon the Office of Management and Budget's approval of the CPA's spending plans. As of July 2004, the former CPA had disbursed about \$1.68 billion of the \$1.7 billion for emergency needs in Iraq, including salaries for Iraqi civil servants and pensions, and for ministry operations.

The United States Seized More Than \$900 Million in Iraq

The CPA informed us in June 2004 that the U.S. military, in coordination with U.S. law enforcement agencies, had seized about \$927 million of the regime's assets in Iraq. The U.S. military seized about \$894 million in Iraqi bonds, U.S. dollars, euros, and Iraqi dinars, as well as quantities of gold and jewelry. This amount included \$750,000 found with Saddam Hussein when he was captured. Department of Homeland Security agents seized an additional \$32 million. The CPA was authorized to use these seized funds for humanitarian and reconstruction efforts in Iraq. As of July 2004, the former CPA disbursed used about \$799 million for reconstruction activities, including projects, ministry operations, and liquefied petroleum gas purchases.

Other Countries Have Transferred about \$847 Million to the DFI

To encourage other countries to transfer the funds to Iraq, the Secretary of the Treasury requested that the international community identify and freeze all assets of the former regime. Additionally, Treasury and State officials said they have engaged in diplomatic efforts to encourage countries to report and transfer the amounts of Iraqi assets they had frozen. For example, since March 2003, State officials told us they have sent more than 400 cables to other countries requesting that they transfer funds to the DFI.

According to Treasury, other countries have frozen about \$3.7 billion in Iraqi assets. About \$2 billion was frozen since March 2003. Treasury officials reported that, as of June 2004, other countries and the Bank for International Settlements had transferred about \$847 million to the DFI. Treasury officials noted that the remaining assets have not been transferred to the DFI because some countries do not have the necessary legislation to effect the transfer. Other countries are holding about \$955 million pending adjudication of claims. U.N. Security Council Resolution 1483 requires the immediate transfer of Iraqi funds identified and frozen in these accounts to the DFI.

According to U.S. officials, Treasury and State continue to leverage the U.S. government's relations with finance ministries and central banks to encourage the transfer of Iraqi assets to the DFI. Treasury and State have worked with countries holding Iraqi assets either to assist them in developing legislation that would allow them to transfer Iraqi assets they hold to the DFI, or to identify other ways they can transfer the assets without violating their own laws. For example, in one case, an Iraqi bank owning an account holding Iraqi assets located overseas formally requested in writing a transfer of the funds to the DFI. The country holding the assets was able to comply with the request and transferred the funds without having to pass legislation. In another instance, a "mirror" account was set up in the DFI and the funds from a country were transferred to that account. Therefore, the funds were never technically transferred out of the originating account. Some of the remaining frozen Iraqi funds are located in financial institutions in Iraq's neighboring countries or Europe.

Limited Progress Has Been Made in Recovering Hidden Assets of the Former Iraqi Regime

Although the United States has made progress in identifying hundreds of individuals, entities, and accounts associated with the former Iraqi regime, limited progress has been made in recovering the regime's hidden assets. Because the former Iraqi regime used a network of front companies, trusts, and cash accounts in the names of the family members of the former regime's leaders and associates, it has been difficult to identify how much remains hidden in the international financial system. U.S. government officials have cited estimates ranging from \$10 billion to \$40 billion in illicit earnings, although it is not clear what earnings went to whom.

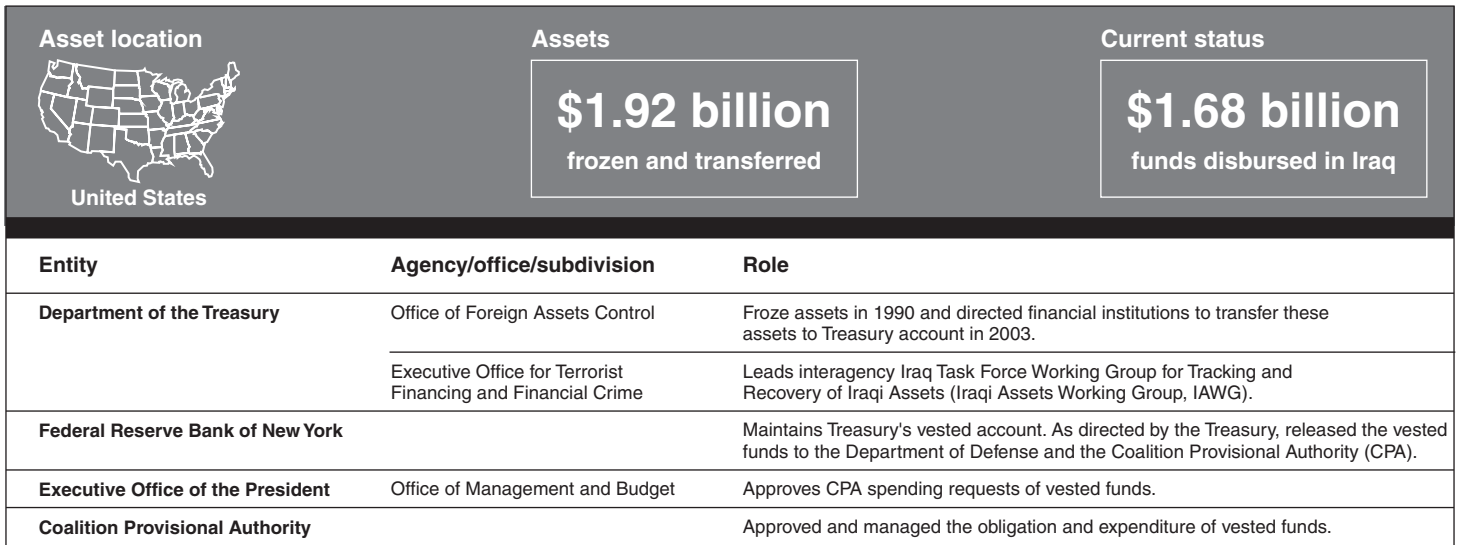
According to U.S. government officials, U.S. government asset recovery efforts have focused on exploiting documents in Iraq, interviewing key financial figures, and convincing other countries to cooperate in identifying and freezing illicit funds that have flowed through or still reside in their countries. For example, Department of Homeland Security agents have

exploited Central Bank of Iraq records for leads regarding Saddam Hussein's procurement network to further investigations of U.S. entities that conducted illegal transactions with Iraq. Internal Revenue Service criminal investigators have conducted interviews of former finance ministry individuals and exploited financial documents of the regime to obtain leads on the location of targeted assets. The Defense Intelligence Agency provides some of the research and analysis used to identify assets of the former Iraqi regime.

In addition, according to Treasury and State officials, they are coordinating efforts to gain the cooperation of other countries. For example, U.S. investigators have identified over 2,600 accounts that potentially belonged to the former regime in other countries. State officials are working through their overseas embassies to get the cooperation of these countries to return the funds to the DFI. Anticipating the end of the occupation of Iraq and the reassertion of the full sovereignty of Iraq, the United States also supported the adoption of U.N. Security Council Resolution 1546 on June 8, 2004, which continues the obligations of U.N. member states to freeze and transfer certain funds, assets, and economic resources to the DFI in accordance with Resolutions 1483 and 1518 adopted in 2003.

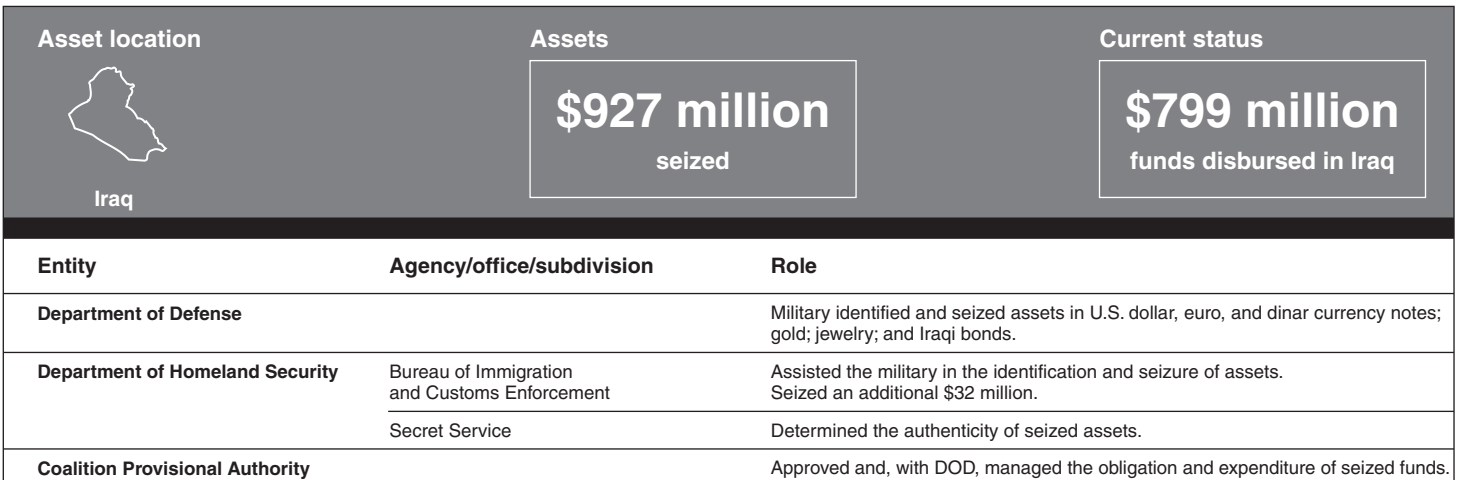
Roles of U.S. Entities in Recovering Iraqi Assets

Figure 2: Assets Frozen in the United States



Source: GAO.

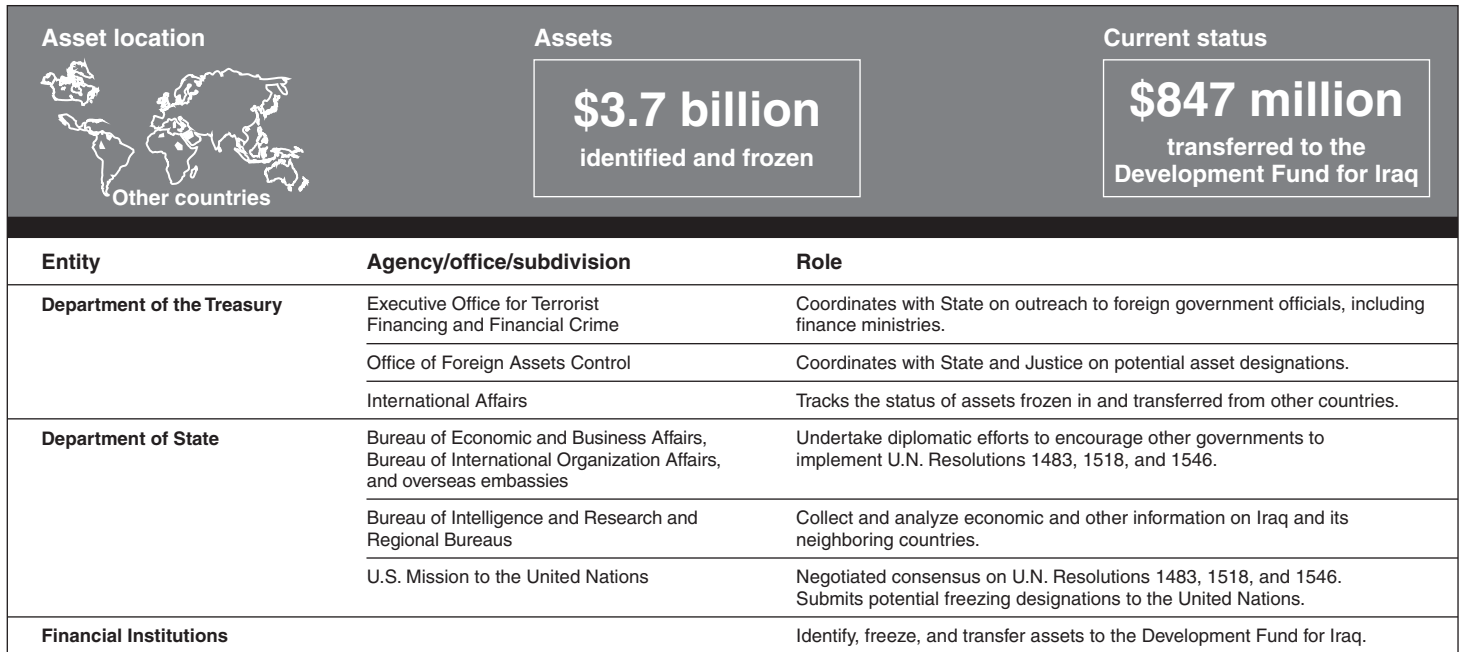
Figure 3: Assets Seized in Iraq



Source: GAO.

Appendix V
Roles of U.S. Entities in Recovering Iraqi
Assets

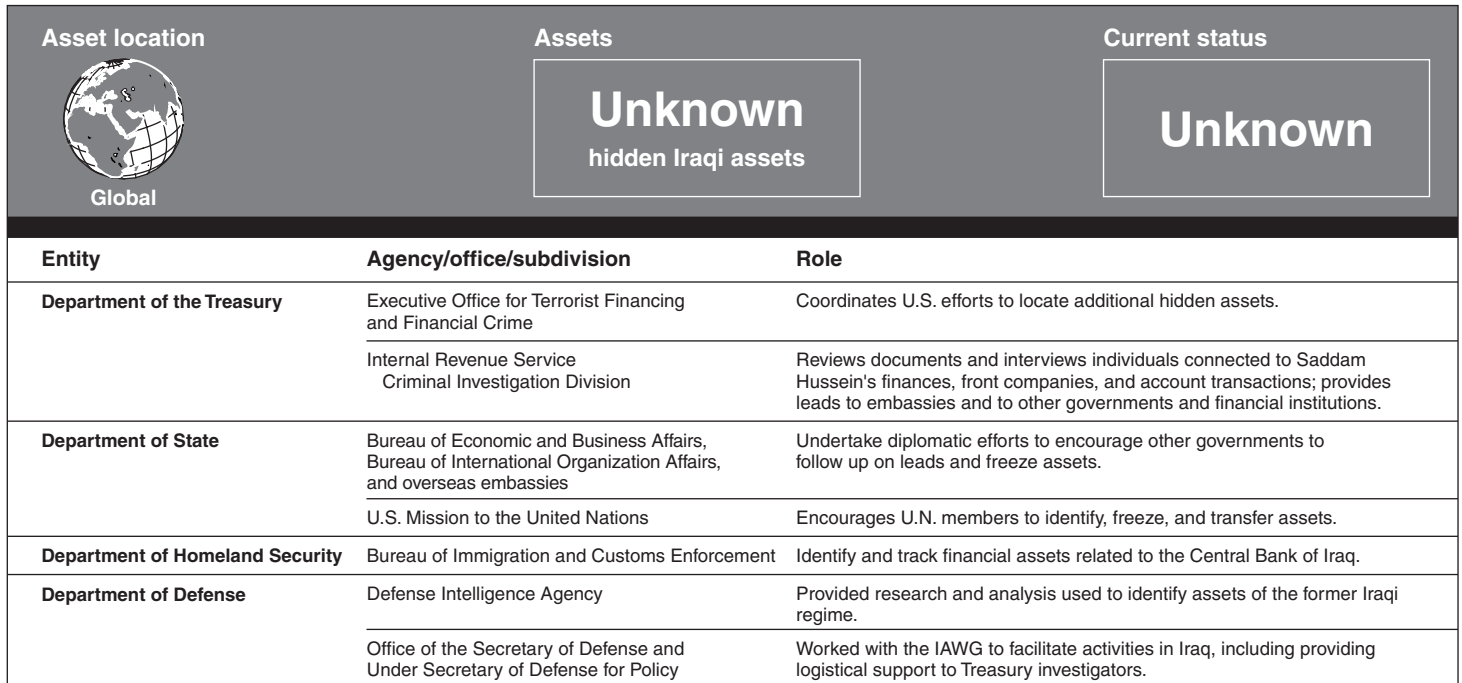
Figure 4: Assets Identified and Frozen in Other Countries



Source: GAO.

Appendix V
Roles of U.S. Entities in Recovering Iraqi
Assets

Figure 5: Hidden Iraqi Assets



Source: GAO.

Comments from the Department of State



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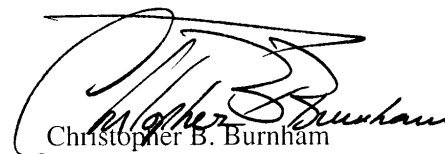
Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "FOREIGN REGIMES ASSETS: The United States Faces Challenges in Recovering Assets but Has Mechanisms that Could Guide Future Efforts," GAO Job Code 320201.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Edward Goff, Deputy Director, Bureau of Economic and Business Affairs, at (202) 647-7677.

Sincerely,



Christopher B. Burnham

cc: GAO – Zina Merritt
EB – Shaun Donnelly
IO – Kim Holmes
State/OIG – Mark Duda

**Department of State Comments on GAO Draft Report
FOREIGN REGIMES ASSETS: The United States Faces
Challenges in Recovering Assets but Has Mechanisms that Could
Guide Future Efforts, (GAO-04-1006, GAO Code 320201)**

GAO Recommendation I

The Departments of the Treasury and State should work with U.S. intelligence and law enforcement agencies to the extent possible to improve the accuracy and completeness of account identifying information needed by financial institutions to identify and freeze assets of foreign regimes.

State Reply:

- We agree with the objective of improving the accuracy and completeness of account identifying information needed by financial institutions to identify and freeze assets of foreign regimes, and will continue to work with foreign governments, Treasury, U.S. intelligence and law enforcement agencies to that end. We meet regularly with all concerned agencies and thoroughly review all names with which we are concerned to ensure that identifying information is as complete and accurate as possible.

GAO Recommendation III*

The Departments of the Treasury and State should develop and document a compilation of lessons learned from the current effort to recover Iraq's assets that could assist in appropriately institutionalizing and leveraging all mechanisms available for a future effort.

State Reply:

- The Department agrees that it would be desirable to work with the Department of Treasury as well as with our Missions to the UN and Iraq to develop and document lessons-learned that may serve as a guide to future efforts.

* GAO Recommendation II regarding Treasury authorities only applies to Treasury.

Comments from the Department of the Treasury

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY

September 2, 2004

Ms. Davi M. D'Agostino
Director, Financial Markets
and Community Investment
General Accounting Office
Washington, DC 20548

Dear Ms. D'Agostino:

We are pleased to have worked directly with you and your staff over the past several months as you prepared to draft the General Accounting Office's report, *Foreign Regimes' Assets: The United States Faces Challenges in Recovering Assets, But Has Mechanisms that Could Guide Future Efforts*. Thank you for offering the Treasury Department the opportunity to review the draft report and to provide comments.

The Treasury Department, which is charged with protecting the U.S. and international financial system, has been at the forefront of international attempts to freeze and recover foreign regimes' assets, as in the case of Iraq. Along with our inter-agency partners such as the State Department, we have used Treasury-specific expertise and contacts along with authorities like the International Emergency Economic Powers Act (IEEPA), the USA PATRIOT Act, and UN Security Council Resolutions (UNSCR) to prevent illicit assets from being hidden, laundered, or misused. By building interagency and international cooperation, we have demonstrated an ability to locate missing or hidden funds and, in the case of Iraq, to help repatriate much of those assets to the Iraqi people. Through determination and creativity, the U.S. government will continue to strive, to the extent applicable and permitted by relevant law, to overcome the challenges of repatriating assets presented by diverse international legal constraints.

Per your request, the following are our comments on the GAO draft report:

- The total amount of Iraqi assets frozen around the world is over \$5.8 billion, and over \$2.7 billion of that amount has been repatriated to the Iraqi people. The report notes that implementation of UN Security Council Resolution 1483 has resulted in the transfer of about \$802 million in frozen Iraqi assets located in other countries. The report should state that total assets transferred by other countries to the DFI amount to approximately \$847 million, from over fifteen jurisdictions. Because of the recent transfer of sovereignty to the interim Iraqi government, there are no recent updates regarding DFI transfers. In addition, we are constantly refreshing our numbers to reflect newly frozen assets and actions taken.
 - Total assets frozen by other countries broken down by amounts reported in 1991 and since March 2003, amount to approximately \$3.7 billion, of which nearly \$2 billion was frozen since March 2003.

See comment 1.

**Appendix VII
Comments from the Department of the
Treasury**

- Based on our current estimates, the existing amount being held by other countries for which there are pending claims is approximately \$955 million.
- The total amount of assets transferred by the United States to Iraq total over \$1.9 billion – including approximately \$208 million transferred to the Development Fund for Iraq (DFI) and \$1.7 billion that was transferred to Iraq under Executive Order No. 13290.

- We worked diligently with the GAO team to provide requested documents as appropriate and spent numerous man hours over the course of several months to ensure that the GAO staff received relevant information and briefings from officials throughout the Treasury Department – including from the Executive Office for Terrorist Financing and Financial Crimes (TFFC), Office of International Affairs, Office of Foreign Assets Control (OFAC), the Financial Crimes Enforcement Network (FinCEN), the Criminal Division of the IRS (IRS-CI), and the Office of General Counsel.

On page 36, in reference to the Iraqi Assets Working Group, the report states that “Because the Departments of State and Treasury did not permit us to review the working group’s minutes, we could not corroborate either these statements or general descriptions with documentary evidence that supports a full accounting of the group’s activities and results.” The report should state that the GAO was informed that it would not be provided the working group’s notes because the notes were classified. In addition to being classified, the notes related to numerous ongoing matters that remained sensitive at the time of the request.

- Compliance with OFAC regulations and requirements is essential to ensure that our nation’s economic sanctions are enforced properly. The report describes how OFAC’s ability to monitor financial institutions’ compliance with its regulations is limited because it currently does not have access to OFAC compliance examinations performed by financial regulators, despite an April 2002 Treasury IG report recommending that Congress be approached about fixing the problem (through amendments to the Right to Financial Privacy Act). The question of whether OFAC should have access to more information in this context is an important one that is being discussed within the Treasury Department and with the federal banking regulators, but this issue has not affected the U.S. government’s ability to recover and repatriate regime assets.

In general, OFAC and Treasury are confident that the manner and level of compliance and monitoring that occurs in the current system, in close coordination with the federal banking regulatory community, functions well and the overall level of compliance by the financial community is very high; however, further information sharing between OFAC and the regulators would certainly be helpful in the administration of sanctions programs. We are aggressively pursuing the issue and have held an ongoing series of meetings with the regulators, both individually and as a group. Based on those meetings, it is not

See comment 2.
Now on p. 33.

See comment 3.

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clear that legislative changes are necessary, but at a minimum, we expect that comprehensive arrangements will be in place shortly to enhance information sharing.

- Also attached to this document are more technical comments and corrections to the GAO report.

Once again, thank you for offering the Treasury Department the opportunity to review this GAO report. If you have any questions or concerns, please feel free to contact me.

Sincerely,



Juan C. Zarate
Assistant Secretary of the Treasury
Terrorist Financing and Financial Crimes

The following are GAO's comments on the Department of the Treasury's letter dated September 2, 2004.

GAO Comments

1. We incorporated the updated amounts of Iraqi assets (1) transferred by other countries to the Development Fund for Iraq, (2) frozen currently by other countries, (3) held by other countries pending adjudication of claims, and (4) transferred by the United States to the Development Fund for Iraq.
2. Treasury took exception to our statement regarding their reluctance to share the Iraqi Assets Working Group meeting minutes with us. Treasury stated that it did not provide these meeting notes because they are classified and related to ongoing matters that remained sensitive at the time of the request. We note that GAO has statutory access to classified information and is required by law to maintain the same level of confidentiality as the agency from which we get the information. Due to the sensitivity of the matters in this particular situation and the nature and timing of our engagement, we relied on public statements and interviews with Treasury officials describing the group's goals and agency officials' general descriptions of the working group's minutes to meet our reporting objectives.
3. Treasury commented that the issue of whether OFAC should have access to the financial regulators' compliance examinations of financial institutions is important and is being discussed within Treasury and with the federal banking regulators, but maintained that this issue has not affected the U.S. government's ability to recover regime assets. Treasury also commented that it is uncertain that legislative changes are necessary to enhance information sharing between OFAC and the financial regulators. Treasury said it is pursuing the issue and it expects that comprehensive arrangements will be in place shortly to enhance information sharing between OFAC and the financial regulators. We agree that further information sharing between OFAC and the financial regulators would be helpful, and we encourage Treasury to seek whatever legislative solutions are necessary to overcome any obstacles to further information sharing.

GAO Contacts and Staff Acknowledgments

GAO Contacts

Joseph A. Christoff, (202) 512-8979
Davi M. D'Agostino, (202) 512-8678

Staff Acknowledgments

Thomas Conahan, Lynn Cothorn, Philip Farah, Rachel DeMarcus, Ronald Ito, Barbara Keller, Sarah Lynch, Zina Merritt, Tetsuo Miyabara, Marc Molino, and Mark Speight made key contributions to this report.

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