

GAO

Testimony

Before the Subcommittee on Commerce,  
Justice, State, and the Judiciary,  
Committee on Appropriations, House of  
Representatives

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# FBI REORGANIZATION

## Progress Made in Efforts to Transform, but Major Challenges Continue

Statement of David M. Walker,  
Comptroller General of the United States



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# Highlights

Highlights of [GAO-03-759T](#), a testimony before the Subcommittee on Commerce, Justice, State, and the Judiciary, Committee on Appropriations, House of Representatives

## Why GAO Did This Study

Following the September 11, 2001, terrorist attacks, the FBI needed to refocus its efforts to investigate those attacks and to detect and prevent possible future attacks. To do this the FBI has taken steps to change its priorities and sought to transform itself to more effectively address the potential terrorist threats. This testimony specifically addresses the FBI's (1) progress in updating its strategic plan; (2) development of a strategic human capital plan; (3) realignment of staff resources to priority areas; (4) reallocation of staff resources from its drug program; (5) efforts to recruit and hire new personnel to address critical staffing needs; (6) efforts to enhance its training program; and (7) implementation of new investigative authorities and internal controls to ensure compliance with the revised *Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations* and to help protect individual civil liberties.

## FBI REORGANIZATION

### Progress Made in Efforts to Transform, but Major Challenges Continue

## What GAO Found

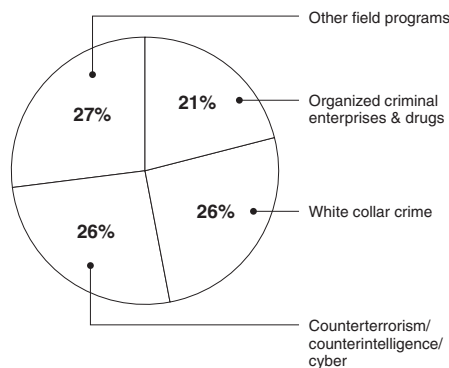
Last June, GAO highlighted the importance of the FBI's success in transforming itself, noting several basic aspects of a successful transformation. Thus far, GAO is encouraged by the progress that the FBI has made in some areas in the past year, but a number of major challenges remain.

The commitment of Director Mueller and senior level leadership to the FBI's reorganization and the FBI's communication of priorities warrant recognition. However, a comprehensive transformation plan with key milestones and assessment points to guide its overall transformation efforts is still needed. The FBI has also not completed updating its strategic plan and has not developed a strategic human capital plan, although it has made some progress in both these areas.

To better ensure focus on the highest priorities, over the last year, several actions were taken, including permanently redirecting a portion of the field agent workforce from criminal investigative programs to counterterrorism and counterintelligence.

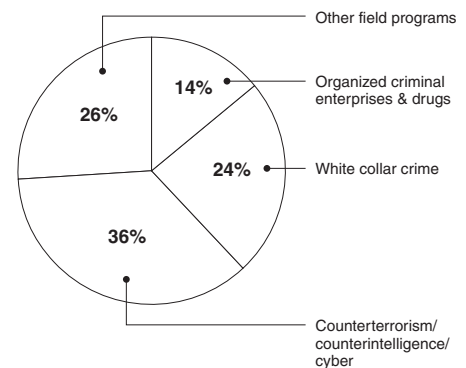
#### Increase in Allocation of FBI Field Agent Positions to Priority Areas

FY 2002 FBI field agent positions before the change to new priorities (N=9,139)



Source: FBI.

FY 2003 FBI field agent positions after the change to new priorities (N=9,190)



However, the FBI continues to face challenges in critical staffing areas including: (1) utilizing staff resources from other criminal investigative programs to address counterterrorism, and (2) a lack of adequate analytical and technical assistance and administrative support personnel.

The FBI's efforts to address critical skill needs and revise its training program are commendable. GAO also found internal controls in place to help ensure compliance with the revised *Attorney General's Guidelines* and protect individual civil liberties.

[www.gao.gov/cgi-bin/getrpt?GAO-03-759T](http://www.gao.gov/cgi-bin/getrpt?GAO-03-759T).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Laurie E. Ekstrand at (202) 512-8777 or [ekstrandl@gao.gov](mailto:ekstrandl@gao.gov).

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Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to return today to discuss the Federal Bureau of Investigation's (FBI) transformation efforts and the implementation of new authorities granted agents under the revised *Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*. As a follow up to the statement that I provided in June 2002,<sup>1</sup> and at your request, my testimony today will specifically address the FBI's

- progress updating its strategic plan;
- development of a strategic human capital plan;
- realignment of staff resources to priority areas;
- reallocation of staff resources from its drug program;
- efforts to recruit and hire new personnel to address critical staffing needs;
- efforts to enhance its training program; and
- implementation of specific investigative authorities associated with the revised *Attorney General's Guidelines* and internal controls to ensure compliance with the Guidelines and to help protect individual civil liberties.<sup>2</sup>

To prepare this testimony, we (1) reviewed FBI planning documents, budgetary, staffing, and workload data; written policies and procedures; and other pertinent documents related to the FBI's reengineering and realignment efforts and implementation of the revised *Attorney General's Guidelines*; (2) interviewed management and program officials at FBI headquarters as well as management personnel in charge of operations in 14 FBI field offices;<sup>3</sup> and (3) obtained input from 176 special agents and

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<sup>1</sup>See U.S. General Accounting Office, *FBI Reorganization: Initial Steps Encouraging but Broad Transformation Needed*, [GAO-02-865T](#) (Washington, D.C.: June 21, 2002). We are reviewing issues related to the FBI's information technology environment and related management practices under a separate engagement.

<sup>2</sup>We did not focus on internal controls associated with other statutes and guidelines relevant to FBI investigations. For example, we did not focus on the type of alleged abuses recently reported by the Department of Justice's Office of the Inspector General (OIG) in June 2003 concerning the detention of 762 aliens who were detained in connection with the FBI terrorism investigations.

<sup>3</sup>We judgmentally selected field offices with the largest number of special agent positions to be reallocated either away from drug enforcement or to the counterterrorism program areas based on the FBI's May 2002 reallocation plans. As a result, we visited the FBI's Atlanta, Chicago, Dallas, Denver, Detroit, Los Angeles, Miami, Newark, New York City, Phoenix, Sacramento, San Antonio, San Francisco, and Washington field offices.

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34 analysts in these 14 FBI field offices using a structured questionnaire and follow up interview questions.<sup>4</sup> To address the effect of the FBI's realignment on drug enforcement efforts, we also interviewed selected Department of Justice (DOJ) and Drug Enforcement Administration (DEA) officials as well as local law enforcement representatives.<sup>5</sup> Additionally, we analyzed DEA's budget, staffing, and workload data and DOJ's *Domestic Drug Enforcement Strategy*. To address issues related to ensuring FBI's compliance with the *Attorney General's Guidelines*, we also met with officials from FBI and DOJ and several private sector groups interested in civil liberties issues.<sup>6</sup> We did our work between September 2002 and June 2003 in accordance with generally accepted government auditing standards.

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## FBI Efforts Part of Broader Transformation Efforts

Last June, I highlighted the importance of the FBI's success in transforming itself, noting several basic aspects of a successful transformation as well as the need for broader government transformation. Today, the importance of the FBI's transformation has not diminished. The FBI continues to stand at the forefront of our domestic intelligence efforts to defend the public from the threat of terrorism, while still maintaining responsibility for investigations of other threats to our public safety such as those from drugs, violent crime, public corruption, and crimes against children. As I pointed out last June, any changes at the FBI must be part of, and consistent with, broader governmentwide transformation efforts that are taking place, especially those resulting from the establishment of the Department of Homeland Security and in connection with the intelligence community.

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<sup>4</sup>The 176 special agents and 34 analysts from whom we obtained input were not randomly selected from all agents and analysts in the 14 offices we visited. In addition, we did not specifically choose the agents who completed our questionnaire. FBI field office managers selected agents and analysts to participate in our questionnaire. Consequently, we consider the questionnaire and interview results to be indicators of the FBI's transformation efforts but they cannot be generalized to all agents and analysts in these offices or to the FBI nationwide.

<sup>5</sup>We interviewed officials from the National Sheriffs' Association, National Association of Chiefs of Police, International Association of Chiefs of Police, and local police agencies located in 13 of the 14 cities in which we made FBI field office visits. The New York City Police Department declined participation.

<sup>6</sup>We interviewed representatives from the American Civil Liberties Union, Center for Democracy and Technology, Electronic Privacy Information Center, Arab American Institute, Coalition for American-Islamic Relations, and the League of United Latin American Citizens.

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To effectively meet the challenges of the post-September 11, 2001, environment, the FBI needs to consider employing key practices that have consistently been found at the center of successful transformation efforts.<sup>7</sup> These key practices are to

- ensure that top leadership drives the transformation;
- establish a coherent mission and integrated strategic goals;
- focus on a key set of principles and priorities;
- set implementation goals and a timeline;
- dedicate an implementation team to manage the process;
- use a performance management system to define responsibility and establish accountability;
- establish a communication strategy;
- involve employees; and
- build a world class organization that continually seeks to implement best practices.

Strategic human capital management is the centerpiece of any change management initiative, including any agency transformation effort. Thus far, we are encouraged by the progress that the FBI has made in some areas in the year since the announcement of phase II of its reorganization. Specifically, the commitment of Director Mueller and senior level leadership to the FBI's reorganization; the FBI's communication of priorities; and the FBI's efforts to realign its activities, processes, and resources warrant recognition. However, a comprehensive transformation plan with key milestones and assessment points to guide its overall transformation effort is still needed.

In addition, as I testified last June, the FBI can and should reinforce its transformation efforts through its performance management system by aligning unit, team, and individual employee performance expectations with planned agency goals and objectives. High-performing organizations create a clear linkage—"line of sight"—between individual performance and organizational success and thus transform their cultures to be more results-oriented, customer-focused, and collaborative in nature.<sup>8</sup> This

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<sup>7</sup>For more information, see U.S. General Accounting Office, *Mergers and Transformation: Lessons Learned for a Department of Homeland Security and Other Federal Agencies*, [GAO-03-293SP](#) (Washington, D.C.: Nov. 14, 2002).

<sup>8</sup>See U.S. General Accounting Office, *Results-Oriented Cultures: Creating a Clear Linkage between Individual Performance and Organizational Success*, [GAO-03-488](#) (Washington, D.C.: Mar. 14, 2003).

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alignment will help FBI employees see the connection between their daily activities and the Bureau's success. The FBI may already show some indication that its agents see how their work relates to agency priorities. Eighty-five percent of the special agents and 31 of the 34 analysts who completed our questionnaire in the 14 FBI field offices we visited generally or strongly agreed that their daily activities have been consistent with the FBI's top priorities.

Coupled with this alignment is the need for a performance management system that makes meaningful distinctions in performance. The FBI currently uses a pass/fail system to rate its employees' performance. This type of system does not provide enough meaningful information and dispersion in ratings to recognize and reward top performers, help everyone attain their maximum potential, and deal with poor performers. As a result, the FBI needs to review and revise its performance management system to be in line with revisions to its strategic plan, including desired outcomes, core values, critical individual competencies, and agency transformational objectives.

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## FBI Strategic Planning Efforts Underway, but Revised Strategic Plan Not Completed

Although a strategic plan is vital to an organization's transformation effort, the FBI has not completed the update to its strategic plan. At the same time, it has made some progress in its strategic planning efforts. Specifically, the FBI's Office of Strategic Planning has developed a framework for a revised strategic plan. The operational divisions have made some progress in completing their program plans—the Bureau's building blocks, in addition to the FBI's top 10 priorities, for completing a strategic plan. Furthermore, information about the progress of the strategic planning process seems to have been disseminated. Both field office managers and field staff we spoke with generally reported being afforded the opportunity to provide input. Director Mueller, through leadership and management conferences, electronic communications, visits to field offices, messages on the FBI's intranet, public statements, and press releases, has communicated the FBI's top priorities. Additionally, the FBI, through a strategic planning reengineering project,<sup>9</sup> is developing a revised strategic management process to better align the planning and budget processes with strategic priorities in the future.

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<sup>9</sup>The strategic planning reengineering project is one of about 30 ongoing reengineering projects the FBI has to address issues related to its transformation efforts.

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The Office of Strategic Planning has developed a framework for the revised strategic plan, and the operational divisions were provided guidance to develop their program plans.<sup>10</sup> According to the FBI, the Counterintelligence and Cyber program plans have been completed, presented to FBI executive management, and approved. The Office of Strategic Planning is in the process of incorporating them into the revised strategic plan. As of June 2003, the Counterterrorism and Criminal Investigative Divisions' program plans<sup>11</sup> were in the final stages of development. FBI officials indicated that the implementation of two staff reprogrammings and delays in the appropriation of its fiscal year 2003 budget, as well as the war in Iraq, delayed the completion of these program plans. FBI officials estimate that a new strategic plan should be completed by the start of fiscal year 2004. It is unclear, however, whether the FBI will achieve this milestone, and because the plan has not been completed we cannot comment on the quality of its contents.

As noted earlier, employee involvement in strategic planning, and transformation in general, is a key practice of a successful agency as it transforms. FBI executive management seems to have recognized this. Based on our discussions with program officials in FBI headquarters and visits to FBI field offices, field management in the 14 field offices we visited reported that they had been afforded opportunities to provide input into the FBI's strategic planning process. In addition, 68 percent of the special agents and 24 of the 34 analysts who completed our questionnaire reported that they had been afforded the opportunity to provide input to FBI management regarding FBI strategies, goals, and priorities, by among others, participating in focus groups or meetings, and assisting in the development of the field offices' annual report. FBI managers in the field offices we visited and 87 percent of the special agents and 31 of the 34 analysts who completed our questionnaire indicated that FBI management had kept them informed of the FBI's progress in revising its strategic plan to reflect changed priorities.

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<sup>10</sup>In developing the program plans, operational divisions are to incorporate information from field office annual reports about their threats, crime situation, and resource needs. Field offices, in developing these annual reports, conduct surveys of other federal, state, and local law enforcement agencies, as well as other sources, to gather relevant information.

<sup>11</sup>The Criminal Investigative Division's program plan is to cover 5 of the FBI's priorities, including plans for public corruption, civil rights, criminal enterprises, violent crime, and white-collar crime.

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FBI management seems to also have been effective in communicating the agency's top 3 priorities (i.e., counterterrorism, counterintelligence, and cyber crime investigations) to the staff. In addition to the awareness of management staff in FBI headquarters and field offices, nearly all of the special agents and all of the analysts who answered our questionnaire indicated that FBI executive management (i.e., Director Mueller and Deputy Director Gebhardt) had communicated the FBI's priorities to their field offices. Management and most of the agents we interviewed in the field were aware of the FBI's top 3 priorities.<sup>12</sup> Further, over 90 percent of special agents and 28 of the 34 analysts who completed our questionnaire generally or strongly agreed that their field office had made progress in realigning its goals to be consistent with the FBI's transformation efforts and new priorities.

Completion of a revised strategic plan is essential to guide the decision making in the FBI's transformation. The Director has set the priorities and they have been communicated; however, it is vital that the FBI place a priority on the completion of a new and formal strategic plan, as it is a key first step in transformation.

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## FBI's Progress in Developing a Strategic Human Capital Plan

In my statement last June, I highlighted the importance of the development of a strategic human capital plan to the FBI's transformation efforts. A strategic human capital plan should flow from the strategic plan and guide an agency to align its workforce needs, goals, and objectives with its mission-critical functions. Human capital planning should include both integrating human capital approaches in the development of the organizational plans and aligning the human capital programs with the program goals. The FBI has not completed a strategic human capital plan, but has taken some steps to address short-term human capital needs related to implementing its changed priorities, as well as made progress, through a variety of initiatives, to begin to link human capital needs with

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<sup>12</sup>Over 80 percent of the special agents and 24 of the 34 analysts who completed our questionnaire ranked counterterrorism, counterintelligence, and cyber crime investigations as the FBI's first, second, and third priorities, respectively.



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the FBI's strategic needs.<sup>13</sup> The FBI should continue to build a long-term strategic human capital approach, including maximizing use of human capital flexibilities,<sup>14</sup> to identify future critical needs and to attract, retain, and develop individuals with these skills.

The FBI has taken actions to address human capital concerns related to implementing its changed priorities. These include (1) initiating several reengineering projects on human capital issues, such as succession planning, enhancing the FBI's communication strategy and streamlining its hiring process; (2) initiating the staffing of the Office of Intelligence, a key component of building the FBI's intelligence mission; (3) realigning agents and support staff to counterterrorism, counterintelligence, and cyber crime investigations to address priority areas; and (4) implementing plans to enhance recruitment and hiring for critical skill needs and training staff shifted to priority areas to address the change in the FBI's priorities. This statement further addresses the FBI's progress in realigning staff resources to priority areas and efforts to enhance recruitment, hiring and training of personnel in the sections that follow.

Additional efforts underway within the FBI to address future human capital needs include, among others:

- Administrative Services Division actions to recruit personnel with critical skills, as identified by the Counterterrorism, Counterintelligence, and Cyber Divisions to support their priority missions.
- Steps to identify key staff competencies and establish comprehensive career programs for all occupational groups in the FBI and plans to link these competencies to training and developmental needs.

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<sup>13</sup> According to Bureau officials, the FBI is currently using the Administrative Services Division's Strategic Plan, reengineering projects, as well as several ongoing initiatives that address long-term human capital issues as a framework for strategic human capital planning efforts. When the operational divisions finalize their strategic plans and put forth their requirements, FBI officials said that the Administrative Services Division will compare these requirements with their strategic plan to ensure that human capital strategies, plans, and goals are aligned with the operational divisions' requirements and needs.

<sup>14</sup> In broad terms, human capital flexibilities represent the policies and practices that an organization has the authority to implement in managing its workforce to accomplish its mission and achieve its goals. See *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, GAO-03-2 (Washington, D.C: Dec. 6, 2002).

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- In support of the FBI's intelligence mission, the creation of two new intelligence analyst positions, the reclassification of a third position, and plans to establish career paths for these positions.
  - Re-engineering the Training Division's mission and operations intended to meet the present and future training needs of the FBI workforce.

In building a long-term approach, the FBI may want to focus on identified aspects of successful human capital management systems, such as utilizing existing human capital flexibilities. While the FBI has made use of several human capital flexibilities, including work-life programs, such as alternative work schedules and transit subsidies; monetary recruitment and retention incentives, such as recruitment bonuses and retention allowances; and incentive awards for notable job performance and contributions, such as cash and time-off awards,<sup>15</sup> it needs to fully maximize the use of available human capital flexibilities in recruiting agents with critical skills, intelligence analysts, and other critically needed staff. The use of such flexibilities should be based on a data-driven assessment of the FBI's specific needs and capabilities. Such an analysis should be outlined in the FBI's strategic human capital plan. After fully maximizing the use of its recruiting flexibilities, if they prove to be inadequate in helping the FBI meet its recruiting and retention goals, the FBI may then want to seek additional legislative authority.<sup>16</sup>

Finally, as the FBI has yet to hire a Human Capital Officer to oversee these efforts, it is critical that this individual have the appropriate expertise in strategic human capital management, as well as the necessary resources to continue to develop and implement long-term strategic human capital initiatives. Options for which may include enhancing existing planning resources or contracting out these functions.

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<sup>15</sup>For example, in fiscal year 2002, the FBI offered 18 recruitment bonuses and 15 superior qualification appointments. In addition to these, the FBI permits reimbursement of relocation expenses for some counterterrorism new hires, and in fiscal year 2002 these expenses were reimbursed for 35 new hires.

<sup>16</sup>The FBI has taken steps to seek additional legislative authority by conducting a pilot program to offer enhanced relocation entitlements to fill critical skill positions.

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## FBI Realigned Staff Resources to Address Priorities, but Some Major Challenges Continue

A key element of the FBI's reorganization and successful transformation is the realignment of resources to better ensure focus on the highest priorities. Since September 11, 2001, the FBI has permanently realigned some of its field agent workforce from criminal investigative programs to work counterterrorism, counterintelligence, and cyber programs. Additionally, over three-fourths of the new special agent positions in the FBI's fiscal year 2004 budget request are for the priority areas. However, despite these efforts, the FBI continues to face major challenges in critical staffing areas. Some of the more noteworthy challenges include (1) a continuing need to utilize special agent and staff resources from other criminal investigative programs to address counterterrorism workload, (2) lack of adequate analytical and technical assistance, and (3) lack of adequate administrative and clerical support personnel.

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## Staff Resources Realigned to Address Investigative Priorities

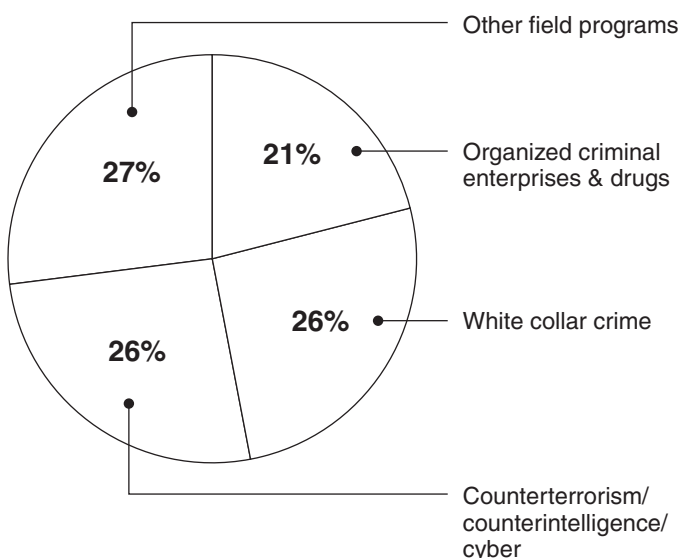
As figure 1 shows, about 26 percent of the FBI's field agent positions were allocated to counterterrorism, counterintelligence, and cyber crime programs prior to the FBI's change in priorities. Since that time, as a result of the staff reprogramming<sup>17</sup> efforts and funding for additional special agent positions received through various appropriations, the FBI staffing levels allocated to the counterterrorism, counterintelligence, and cyber program areas have increased to about 36 percent.

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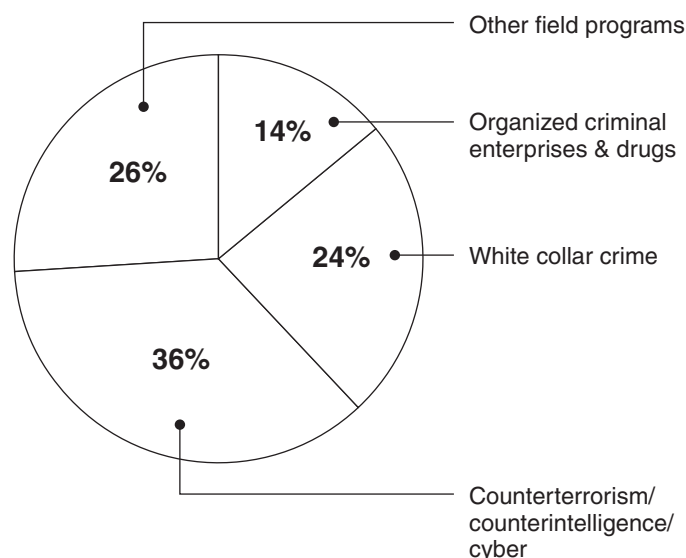
<sup>17</sup>The FBI has the authority to reprogram funds (i.e., move funds between activities within a given account) without notifying the relevant appropriations committees unless a specific purpose is prohibited or the amount of the reprogramming exceeds a dollar threshold (\$500,000 or a 10-percent change in funding level, whichever is less). Any other reprogramming action requires notification to the relevant appropriations committee 15 days in advance of the reprogramming.

**Figure 1: Increase in Allocation of FBI Field Agent Positions to Priority Areas**

FY 2002 FBI field agent positions before the change to new priorities (N=9,139)



FY 2003 FBI field agent positions after the change to new priorities (N=9,190)



Source: FBI.

The FBI's staff reprogramming plans, carried out over the last 12 months, have permanently shifted 674<sup>18</sup> field agent positions (about 7.5 percent of the 8,881 field agent positions existing before the change to new priorities) from the drug, white-collar, and violent crime program areas to counterterrorism and counterintelligence. In addition, the FBI established the Cyber program, which consolidated existing cyber resources.<sup>19</sup>

Despite the reprogramming of agent positions in fiscal year 2002 to counterterrorism and the additional agent positions received through various supplemental appropriations since September 11, 2001, agents from other program areas have also been continuously redirected to work temporarily on counterterrorism. This demonstrates a commitment on the part of the FBI to staff this priority area. The FBI has certain managerial

<sup>18</sup>This figure excludes 11 supervisory positions that were returned to the drug program.

<sup>19</sup>The FBI is working with Congress to obtain some flexibility with respect to the funding for cyber-related agent positions, according to FBI officials.

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flexibilities to temporarily redirect staff resources to address pressing needs and threats.

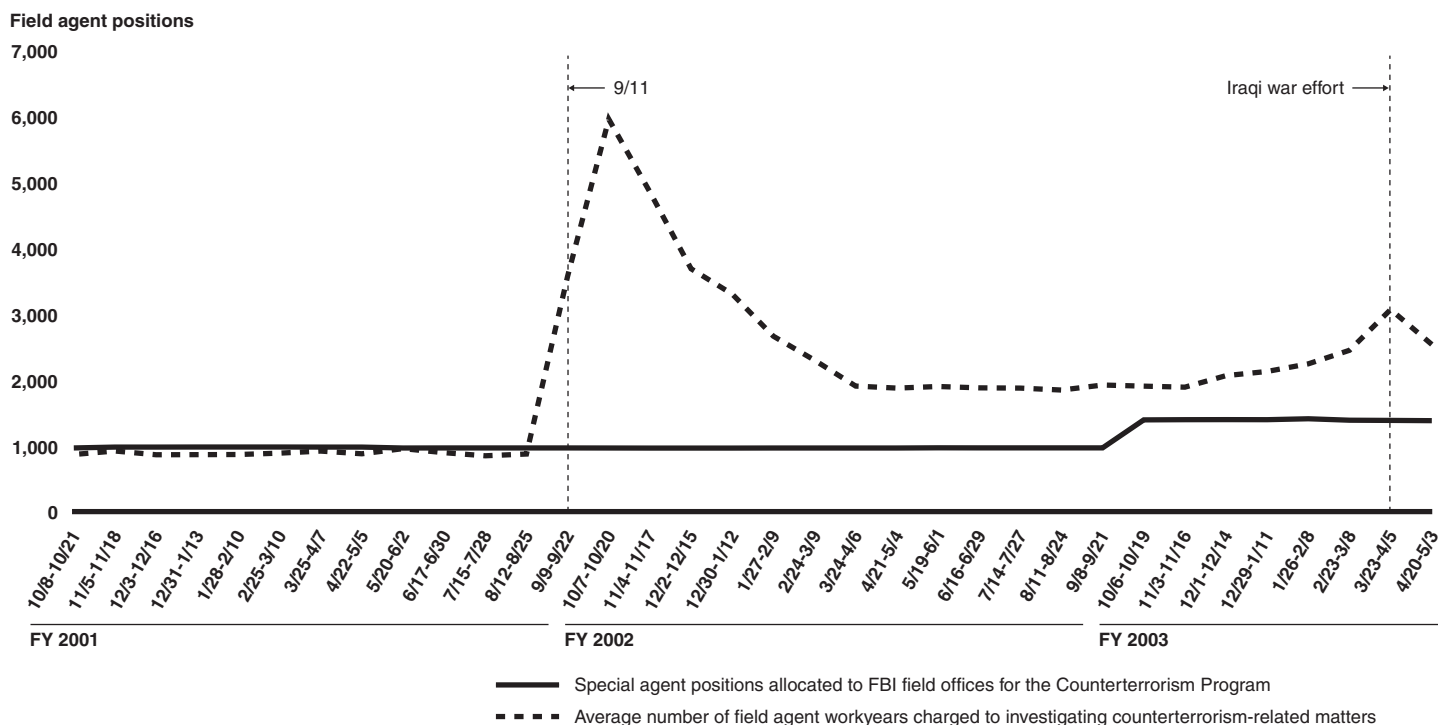
As figure 2 shows, the average number of field agent workyears<sup>20</sup> charged to investigating counterterrorism-related matters<sup>21</sup> has continually outpaced the number of agent positions allocated to field offices for counterterrorism since September 11, 2001. The FBI's current policy is that no counterterrorism leads will go unaddressed, resulting in a need for these shifts in resources. This policy results in substantial commitment of resources that may have to be reassessed in the future. As the FBI gains more experience and continues assessing risk in a post September 11, 2001, environment, it will gain more expertise in deciding which matters warrant investigation and the investment of staff resources. To better manage the investment of its staff resources in the future, the FBI should systematically analyzing the nature of leads and the output of their efforts. This will enable the FBI to better pinpoint how best to invest staff resources based on value/risk and overall resource considerations in the future.

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<sup>20</sup> A workyear represents the full-time employment of one worker for 1 year.

<sup>21</sup> For this statement, a matter is an allegation that is being or has been investigated by the FBI.

**Figure 2: Comparative Analyses of FBI Field Agent Non-Supervisory Positions Allocated and Agent Workyears Charged to Counterterrorism Matters**



Source: GAO analysis of FBI TURK data.

Note: The Time Utilization and Recordkeeping (TURK) system is used by the FBI to record the proportion of time spent by field agents on various types of investigative matters such as organized crime, white-collar crime, and counterterrorism. The FBI uses the TURK system to track and project the use of field resources. Data derived from the TURK system are only as valid as the information reported by FBI field agents.

Use of field agent staff resources for three of the four other programs we included in our review (i.e., drug enforcement, violent crime, and white collar crime) were below their allocated staffing levels. Appendix I provides comparative analyses of field agent positions allocated to field offices for these other criminal programs and the average number of field agent workyears charged to investigating these matters.

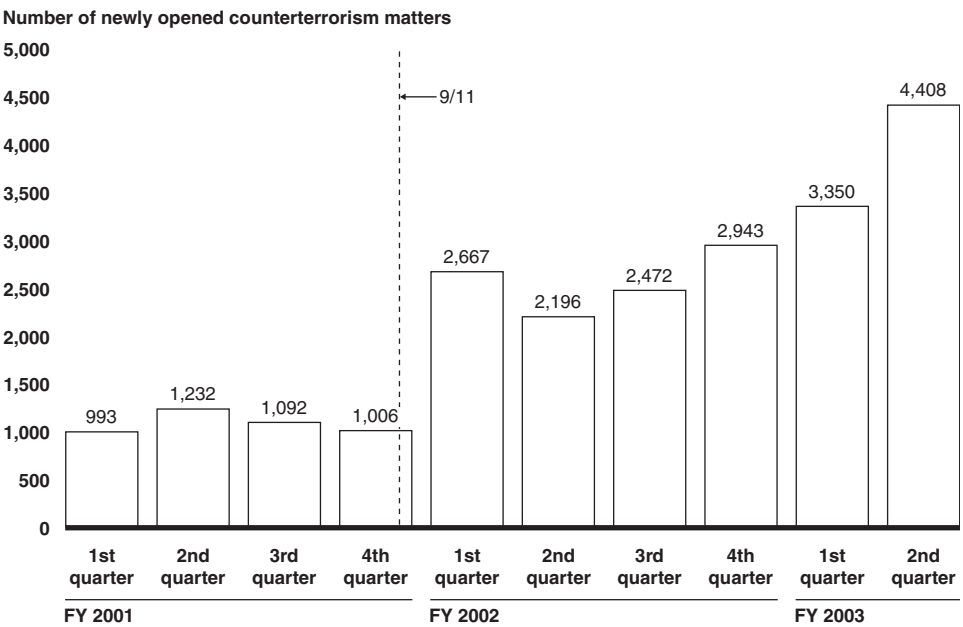
Last year, we testified that neither the FBI nor we were in a position to determine the right amount of staff resources needed to address the priority areas. Since that time, the FBI has completed a counterterrorism threat assessment and has had some experience in staffing priority work in a post-September 11, 2001, environment. This, along with an analysis of the nature of leads and the output from them, may put the Bureau in a

better situation to assess the actual levels of need in counterterrorism, counterintelligence, and cyber programs.

Counterterrorism Matters Have Increased

The level of effort in counterterrorism is further reflected in the number of counterterrorism matters that have been opened following September 11, 2001. As figure 3 shows, the number of newly opened counterterrorism matters has increased substantially.

Figure 3: Number of Counterterrorism Matters Newly Opened, Fiscal Years 2001 through Second Quarter Fiscal Year 2003



Source: GAO analysis of FBI data.

FBI Field Offices Lack Adequate Support Personnel

Previous internal and external studies of the FBI and our recent visits to 14 FBI field offices have identified a lack of adequate support personnel. Among the critical support personnel needs identified were intelligence analysts, foreign language specialists, computer engineering and technical specialists, and administrative and clerical support.<sup>22</sup> Based on information

<sup>22</sup>In general, the FBI is currently operating below its authorized staffing levels for support personnel.

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obtained during our site visits to FBI field offices and discussions with officials in the FBI headquarters, there continues to be challenges associated with meeting resource needs in these areas.

During our site visits, both management officials and field agents indicated that inadequate numbers of intelligence analysts and foreign language specialists resulted in delays to investigative work. Specifically, 70 percent of the agents and 29 of the 34 analysts who completed our questionnaire responded that the staffing level of intelligence analysts was less than adequate given their office's current workload and priorities. As a result, many agents said they spend time performing their own intelligence analysis work.

FBI officials also expressed a need for more foreign language specialists largely due to an increase in translation needs, for instance, translating documents and electronic surveillance recordings. Fifty-four percent of the agents and 17 of the 32 analysts who completed our questionnaire indicated that the staffing level of foreign language specialists was less than adequate given their office's current workload and priorities.

Also, agents expressed a need for additional computer and technical specialists. Fifty three percent of the agents and 21 of the 34 analysts who completed our questionnaire indicated that staffing level of computer and technical support was less than adequate given their office's current workload and priorities. Agents reported that they sometimes have to wait for several days to get computer hardware support when needed. Additionally, managers and agents in the field offices said that their field office lacked adequate access to staff who could assist in the search and seizure of computer evidence as well as provide forensic examination of computers.

Lastly, FBI management and special agents with whom we met indicated that the staffing level of administrative and clerical support personnel was inadequate and that this adversely affected the efficiency of their investigative activities. Over 60 percent of the agents and 18 of the 34 analysts who completed our questionnaire indicated that the level was less than adequate given their office's current workload and priorities. According to FBI field office officials, it was not uncommon for management, agents, and analysts to take on many of the administrative support functions, such as answering telephones and entering data, in addition to their other responsibilities.



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## Reallocation of FBI Resources Affects DOJ's Drug Enforcement Efforts

Last year at this time the FBI announced that, in keeping with its new priorities, it would move 400 field agent positions from its drug program to counterterrorism.<sup>23</sup> Indeed, the FBI has transferred even more agent positions than it originally announced and has augmented those agents with the short-term assignment of additional field agents from drug and other law enforcement areas to work on counterterrorism. As would be expected, the number of newly opened drug cases has fallen in relation to the decline in the number of field agent positions allocated to drug enforcement. Additionally, according to the FBI and DOJ's recent domestic drug enforcement strategy, the FBI's, as well as DEA's, drug enforcement efforts will primarily focus on targeting the most significant high-level drug trafficking organizations leaving some other lower-level drug enforcement activities (e.g., street sweeps) to state and local entities.<sup>24</sup> It is unclear the extent to which state and local law enforcement agencies can sustain or enhance their drug enforcement efforts given that they also have added homeland security responsibilities and face their own fiscal challenges.

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## Nearly Half of the FBI Field Agent Drug Positions Have Been Reallocated to Priority Program Areas

Since September 11, 2001, about 40 percent of the positions allocated to FBI field offices' drug program have been reallocated to counterterrorism and counterintelligence priority areas. As figure 4 shows, just prior to September 11, 2001, about two-thirds (or 890) of the 1,378 special agent positions allocated to FBI field offices for drug program matters were direct-funded.<sup>25</sup> The remaining one-third (or 488) of the special agent positions was funded by the Organized Crime and Drug Enforcement Task Force program (OCDETF). As of the second quarter of fiscal year 2003, the number of direct-funded positions allocated to FBI field offices for the drug program had decreased over 60 percent, going from 890 to 335. OCDETF-funded agent positions, which have remained constant, now

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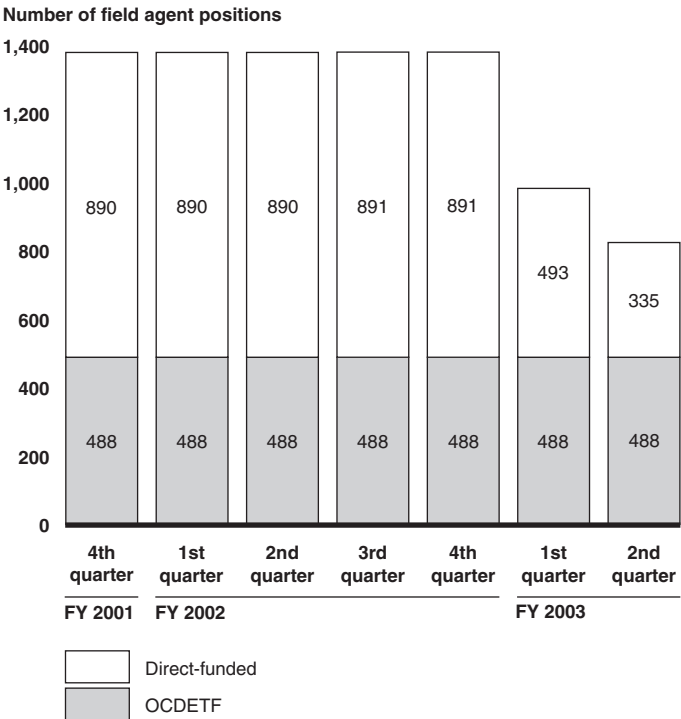
<sup>23</sup>The FBI also pledged to move 59 agent positions from the violent crime and 59 agent positions from white-collar crime, but these moves represented a much smaller reduction in agent staffing than the shift from the drug enforcement area.

<sup>24</sup>DEA officials said that DEA would continue to provide state and local law enforcement agencies with investigative, intelligence, training, and financial assistance in addressing their most significant or violent drug trafficking problems.

<sup>25</sup>FBI's drug program workforce is composed of field agent positions funded through direct FBI appropriations and those supported with OCDETF funds. The OCDETF Program was established in 1982 to focus federal, state, and local law enforcement efforts against organized crime drug trafficking organizations that pose the most serious threat to our national interests.

account for about 60 percent of the FBI field offices’ drug program staff resources. Consistent with Director Mueller’s commitment, the FBI has not reduced the number of agents in the OCDETF program.

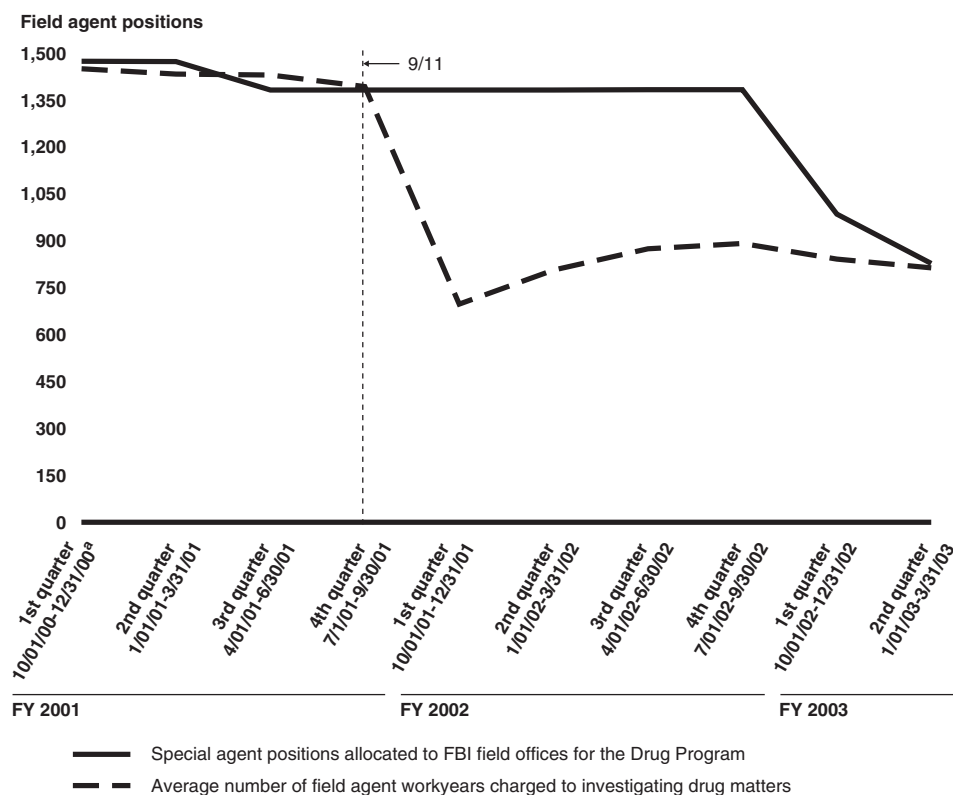
**Figure 4: Number of Special Agent Positions Allocated to FBI Field Offices for Drug Work Since September 11, 2001**



Source: GAO analysis of FBI data.

While this reduction represents a substantial decline in the number of field agent positions allocated to drug work, in fact, the reduction in drug enforcement workyears was actually larger than these figures reflect. Specifically, as needs arose for additional agents to work counterterrorism leads, field agents assigned to drug program squads were temporarily reassigned to the priority work. As figure 5 shows, at the extreme, during the first quarter of fiscal year 2002 (just after the events of September 11, 2001), while 1,378 special agent positions were allocated to drug work only about half of these staff resources worked in the drug program area. During fiscal year 2003, the allocated number of drug agent positions and the average number of field agent workyears charged to drug matters start to converge to the new targeted levels.

**Figure 5: Comparative Analyses of FBI Field Agent Non-Supervisory Positions Allocated and Agent Workyears Charged to Investigating Drug Program Matters**



<sup>a</sup>These periods closely approximate, but do not exactly conform to the TURK reporting periods included in each quarter.

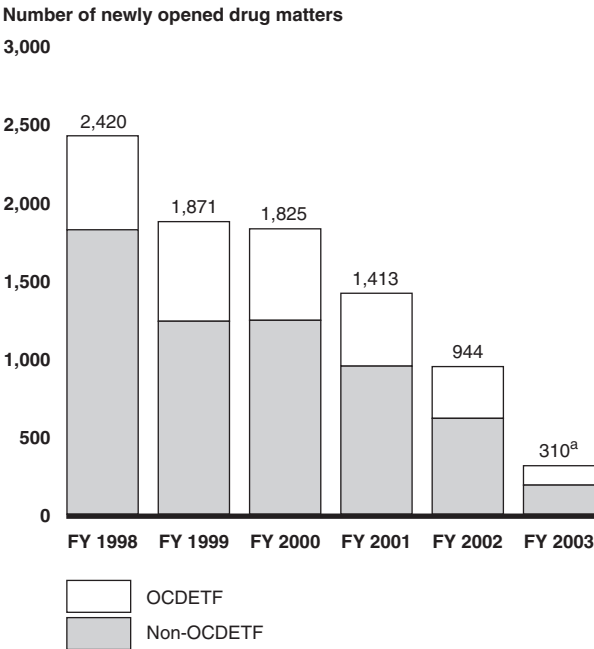
The reduction in drug enforcement resources has reduced the number of drug squads in FBI field offices, according to FBI officials. The number of FBI agents supporting the High-Intensity Drug Trafficking Area (HIDTA) program initiatives has also been reduced, according to FBI officials.<sup>26</sup>

The significant reduction in agent-strength in the drug enforcement area may be an important factor in the smaller number of drug matters opened in the first two quarters of fiscal year 2003. As figure 6 shows, the number

<sup>26</sup>The HIDTA Program began in 1990 to provide federal assistance to help coordinate and enhance federal, state, and local drug enforcement efforts in areas of major illegal drug production, manufacturing, distribution, transportation, and use.

of newly opened drug matters went from 1,825 in fiscal year 2000 to 944 in fiscal year 2002 and to 310 in the first half of fiscal year 2003, indicating a rate for the entire year that may be well below that of previous years.

**Figure 6: Number of FBI Drug Matters Newly Opened, Fiscal Years 1998 through Second Quarter Fiscal Year 2003**



Source: GAO analysis of FBI data.

<sup>a</sup>This figure includes only the first two quarters of fiscal year 2003.

We want to make clear that we are in no way intending to fault the FBI for the reassignment of agents from drug enforcement to higher-priority areas. Indeed, these moves are directly in line with their priorities and in keeping with the paramount need to prevent terrorism.

**DEA Is Taking Steps to Fill Some of the Drug Enforcement Gap**

The DEA, the lead federal drug enforcement agency, has taken a slightly larger role in domestic drug enforcement through increasing its participation in interagency drug enforcement activities. For example, in fiscal year 2002, DEA began shifting 34 agent positions from headquarters and various field divisions to support the southwest border—a region that has experienced a significant reduction in FBI special agent positions. During the same period, the DEA also increased its authorized staffing level for HIDTA programs by 13 special agent positions. For fiscal year

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2003, DEA received a budget enhancement that will fund an additional 216 special agent positions, to among other things, strengthen its financial investigations and increase its participation in OCDETF. For fiscal year 2004, DEA has requested an enhancement to fund 233 additional agent positions, plus the reassignment of 293 special agent positions from their Mobile Enforcement Team (MET) and Regional Enforcement Team (RET) to investigate priority drug trafficking organizations. Overall, in terms of combined DEA and FBI drug agent positions, DEA enhancements (received and planned) will fill some, but not all, of the drug program personnel gap left by the reassignment of FBI drug program agents to higher-priority work.

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### New Domestic Drug Enforcement Strategy Focuses at High-Level Activity

According to the April 2003 Department of Justice *Domestic Drug Enforcement Strategy*, DOJ's drug enforcement effort, consistent with the OCDETF initiative, will center on investigations of the most significant international, national, regional, and local drug trafficking organizations. Specifically, it focuses drug enforcement efforts on disrupting or dismantling priority targets on its Consolidated Priority Organization Target list. The proposed movement of resources out of DEA's MET and RET program is consistent with this new strategy.

In July 2001, we issued a report concerning the management of the MET program.<sup>27</sup> At that time we reported that, according to DEA, the MET program was needed because (1) state and local police agencies did not have sufficient resources to effectively enforce the drug laws and (2) local law enforcement personnel were known to local drug users and sellers, making undercover drug buys and penetration of local distribution rings difficult and dangerous. DEA reported about 16,000 arrests as a result of MET deployments from its inception in fiscal year 1995 through the third quarter of fiscal year 2003.<sup>28</sup> DEA also noted that about a quarter of its MET investigations involved either drug traffickers operating on a broader scale than the local jurisdiction of the deployment of international traffickers.

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<sup>27</sup>See U.S. General Accounting Office, *DEA's Mobile Enforcement Teams: Steps Taken to Enhance Program Management, but More Can Be Done*, [GAO-01-482](#) (Washington, D.C.: July 2001).

<sup>28</sup>This figure is as of June 2003.

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The overall reduction in combined FBI and DEA staffing of drug enforcement positions and the change in strategy removes some drug enforcement assistance from local jurisdictions at a time when many, if not most, state and local budgets are under intense pressure.<sup>29</sup> While this may in fact be the best use of scarce resources, drug crime data of many kinds should be monitored closely to assess the impact of these changes and ensure that we are using our resources to the best advantage.

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## FBI Has Made Progress in Recruitment and Hiring

The FBI has made some progress in developing and implementing its recruitment strategies and in its efforts to hire special agents and support staff with critical skills. While fiscal year 2002 special agent hiring goals were met in terms of numbers, the FBI fell short of the desired critical skills mix. For support staff, hiring for that year was far lower than was targeted. For fiscal year 2003, as of May, the outlook is better for both special agents and some support staff skill areas. For special agents, only in the language skills area has hiring lagged below a pace needed to meet the goal. Support staff hiring seems on track to meet many, but not all, of their critical skill targets.

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## FBI Made Progress in Developing and Implementing Hiring Strategies for Special Agents

As previously noted, in order to recruit staff to align with its needs and priorities after September 11, 2001, the FBI developed a National Special Agent Recruitment Plan for fiscal years 2002 and 2003. This plan established recruitment and hiring goals, identified critical skills the FBI is targeting, and established a timeline for achieving these goals. To implement its recruitment plan, in January 2002, the FBI began a hiring initiative aimed at recruiting applicants with skills and backgrounds identified as critical for new special agents. This includes a focus on skills in computer science, specific foreign languages, physical sciences and engineering, as well as experience in counterterrorism and counterintelligence. The FBI has set specific numerical targets for these skills to try to ensure that new agents as a group would be hired with the targeted mix of skills. To enhance the special agent applicant pool in

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<sup>29</sup>In our report addressing challenges in an intergovernmental setting, see U.S. General Accounting Office, *Highlights of A GAO Symposium: Addressing Key Challenges in an Intergovernmental Setting*, [GAO-03-365SP](#) (Washington, D.C.: Mar. 2003), we note that as a result of revenue declines, 37 states had reduced their budgets and that this shortfall translated into, among other things, reductions in aid to local governments and across the-board spending reductions. In addition, the National Association of State Budget Officers suggests that states will face a fiscal gap of over \$80 billion in fiscal year 2004.

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## FBI Is Meeting Special Agent Hiring Goals and Is Improving in Hiring Agents with Critical Skills

certain critical skill areas, for example, the FBI established a Computer Science/Information Technology Special Entry Program.

The FBI was successful in meeting its overall hiring goals for special agents during fiscal year 2002. During that year, the FBI hired 923 agents of the 927 planned. The FBI, however, was less successful in hiring the special agents, who as a group possessed the mix of critical skills specified under the fiscal year 2002 hiring initiative. The timing of this hiring process may have been a factor in not achieving the targeted skill mix during this year. The FBI announced its critical skill goals approximately 4 months after September 11, 2001, and at the end of a 2-year hiring freeze.<sup>30</sup> In order to hire special agents quickly, in the months following September 11, 2001, the FBI had to rely on its existing applicant pool, which largely consisted of applicants with skills in accounting, law, and law enforcement. The available applicant pool also included applicants with foreign language skills, but not necessarily in the newly targeted languages.

During the first 8 months of fiscal year 2003, the FBI hired about 80 percent (or 550) of the special agents it needs to meet its hiring goal of 663 agents. In all of its identified critical skill areas, except agents with foreign language skills, the FBI is on track to reach its stated hiring goals, and in some areas has exceeded its goals. Appendix II contains additional information concerning the FBI's fiscal year 2002 and 2003 hiring.

It is important to note that the FBI hiring process for special agents has been shortened considerably. While still lengthy, it is down to a minimum of about 8 months from application submission to final processing, from 13 months several years ago. Appendix III includes a graphic presentation of the steps in the hiring process and the time associated with each step. Once new agents are hired, they are sent to 17 weeks of new agent training at the FBI Academy in Quantico, Virginia, followed by a 2-year probationary period during which time special agents receive developmental supervision and on-the-job training. We note this to make the point that it will take time to build up agent strength within the Bureau.

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<sup>30</sup>During the hiring freeze the FBI only hired for positions that program managers deemed critical.

## Support Staff Hiring Goals Not Met in 2002, but 2003 Shows Some Improvements

About 60 percent of the FBI's workforce is represented by support staff, which consists of analysts (e.g., intelligence and financial), scientists, technical specialists, administrative support, laborers, and other nonagent personnel. In fiscal year 2002, the FBI did not meet its overall goal for hiring support staff, filling only 643 (44 percent) of 1,465 positions. The initial goal for hiring support staff in fiscal year 2003 was set at about 2,000. However, the goal has been revised downward during the year to reflect attrition rates that were lower than anticipated, somewhat smaller enhancements for support staff than were anticipated, and a reevaluation of their overall budget situation.<sup>31</sup> The capacity of the FBI to process new support staff applications was approximately 1,500 applications per year, according to FBI officials. The current target for support staff hiring is set at 1,023. As of May 2003, the FBI has hired 565 support staff, about 55 percent of the goal as compared to 80 percent of its special agent goal.

The FBI does not set hiring goals for all types of support staff but only for those that are deemed critical. Table 1 shows fiscal year 2003 hiring goals for selected support staff positions. As the table shows, the FBI is doing well in hiring for some critical areas but is lagging in others.

**Table 1: FBI Support Staff Hiring for Some Critical Areas**

Critical support positions	FY2003 hiring goal	FY2003 actual (as of 5/6/03)	Percent of goal
Field investigative support	60	2 <sup>a</sup>	3
Scientist/forensic/HAZMAT	17	37	218
Electronic technician/electronic engineers	33	37	112
Information technology specialists	44	45	102
Intelligence analysts, research specialists, and operations specialists	126	115	91
Language specialists	45	20 <sup>b</sup>	44
Special surveillance groups/lookout	180	53	29
Security specialists	110	0 <sup>c</sup>	0

Source: GAO analysis of FBI data.

<sup>a</sup>Nineteen positions were filled with on-board employees.

<sup>b</sup>The FBI plans to fill the remaining 25 positions with existing contract linguists.

<sup>c</sup>According to FBI officials, 39 of these positions were filled with internal FBI personnel.

<sup>31</sup>Because of the amount of overtime worked in fiscal year 2002, the amount anticipated to be worked in fiscal year 2003 and pay raise requirements that were not fully funded, the amount of funds available in the FBI's Salaries and Expense account for regular pay was less than projected when the original goal was set, according to FBI officials.



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Consistent with Director Mueller's plans to enhance its intelligence program, the FBI has, as noted earlier, redefined and revised intelligence-related analyst positions and has made some progress in hiring intelligence analysts. In fiscal year 2002, the FBI did not specify hiring goals in the intelligence area; however, in fiscal year 2003, the FBI identified intelligence analysts as a priority hiring category. As of May 2003, the FBI has hired 115 new analysts in the intelligence area—including intelligence analysts, intelligence operations specialists, and intelligence research specialists. On the basis of its revised fiscal year 2003 target—to hire 126 analysts in this area—the FBI is well on the way to reaching its target.

While still short of meeting its foreign language critical skill targets, the FBI has been able to bolster its foreign language capacity by increasing the number of contract linguists and language specialists. Before September 11, 2001, there were 405 contract linguists and 379 language specialists, and as of May 2003, there were 712 contract linguists and 421 language specialists. In the priority languages identified to support the FBI's new priorities, 195 contract linguists and 44 language specialists were hired between October 2002 and March 2003.

Through our field visits, two other areas in which agents and managers indicated that there were support staff challenges were information technology and administrative support. For fiscal year 2003, the FBI plans on hiring 44 information technology staff and 211 administrative staff. As of May 2003, the FBI hired 45 information technology and 94 administrative personnel—exceeding its goal for information technology and hiring about 45 percent of its goal for administrative personnel.

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## FBI's Training Program Revamped to Address Priority Areas

In addition to hiring new employees with critical skills, the FBI's reorganization plans called for revisions to the FBI's training program. Over the past 12 months, the FBI has improved its ability to train its workforce and to address priority areas. Encouraging steps taken by the FBI include: (1) efforts to provide revised training to new agents and agents assigned to work in priority areas; (2) progress establishing the College of Analytical Studies to train analysts; and (3) plans to reengineer its overall training program to better meet the long-term training needs of the Bureau's workforce.

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## Agents Provided Revised Training in Priority Areas

In January 2003, in an effort to focus on the delivery of training to agents and analysts reassigned to work in the priority areas, the FBI cancelled most of its training for on-board staff that was not focused on counterterrorism, counterintelligence, and cyber crime investigations. This allowed the FBI to shift resources to develop training for new agents and those agents who were moved to work in counterterrorism, counterintelligence, and cyber matters. For example, the FBI Training Division revised existing new agent coursework to focus on the priority areas and developed new courses for agents who were assigned to counterterrorism and counterintelligence. Agents assigned to the newly established Cyber Division are required to complete basic coursework on cyber crime investigations and are encouraged to complete a core curriculum consisting of eight classes, including technical coursework as well as cyber investigative techniques.

As of April 2003, all new agents are to receive revised training in the priority areas. In addition, as of May 2003, 545 of all agents assigned to work on counterterrorism and counterintelligence investigations have received revised training in these areas.<sup>32</sup> Those agents who have been designated by the Counterterrorism and Counterintelligence Divisions as needing revised training will have completed the required training by the end of the 2003 calendar year, according to FBI officials. We did not evaluate the curriculum of the revised training courses. Appendix IV provides additional details about the FBI's allocation of \$10 million provided in the House Conference Report<sup>33</sup> accompanying the fiscal year 2003 budget and revisions to the FBI's training in priority areas.

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<sup>32</sup>Currently, the Training Division tracks the total number of agents who have completed revised training in counterterrorism, but it does not track whether those agents were permanently redirected from criminal programs to counterterrorism. The Special Agents-in-Charge of the field offices have the authority to designate which agents—permanently redirected or not—should receive revised training. For example, an agent who was permanently redirected from a criminal program may have had prior experience in counterterrorism investigations, alleviating the need for basic counterterrorism training, according to FBI officials.

<sup>33</sup>The Conference report for the Department of Justice Appropriation Act, 2003 (P.L. 108-7, 117 Stat. 49 (2003)) indicates that the Conference provided \$10 million above the FBI's budget request for training needs. H. R. Conf. Rep. No. 108-10, at 617 (2003).

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## College of Analytical Studies in Place to Build Analysts Skills

To further enhance analysts' skills and abilities,<sup>34</sup> the FBI created the College of Analytical Studies at its Quantico training facility in October 2001. The College of Analytical Studies provides training to new and in-service analysts in tools and techniques for both strategic and technical analysis.<sup>35</sup> Completion of basic analytical coursework is required of new analysts, while advanced analytical coursework is offered to experienced analysts. The College of Analytical Studies trained 193 analysts in fiscal year 2002 and is scheduled to train an additional 1,032 analysts in fiscal year 2003.<sup>36</sup> Additionally, the FBI is continuing to identify and schedule additional analysts from the priority areas who should receive analytical training, according to FBI officials. As with the revised agent training, we did not evaluate the content of the curriculum offered by the College of Analytical Studies. FBI officials told us that after each training course students are asked to provide feedback, which may be used to revise coursework. We did not evaluate this feedback.

Additionally, the FBI's Office of Intelligence has been tasked to develop all policies, including education requirements, with regard to analysts working in the intelligence area. The Office of Intelligence intends to work with the College of Analytical Studies to ensure that appropriate analytical training has been provided, according to FBI officials. The FBI is also pursuing accreditation for its College of Analytical Studies.

The FBI continues to work with other federal agencies to improve their analytical capabilities. For example, the FBI is currently working with the Joint Military Intelligence College to allow a select number of FBI personnel with intelligence backgrounds to earn a Master of Science in Strategic Intelligence. FBI officials anticipate that the program will begin accepting applications from interested FBI personnel by the end of fiscal year 2003, for consideration by FBI executives and final acceptance by the Joint Military Intelligence College for classes in fiscal year 2004.

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<sup>34</sup>The College of Analytical Studies primarily provides training for analysts in the intelligence area.

<sup>35</sup>Instructors at the College of Analytical Studies include both FBI and CIA personnel. As proposed in the training reengineering plan, the Special Agent-in-Charge of the FBI Academy will oversee the College of Analytical Studies.

<sup>36</sup>In fiscal year 2003, the College of Analytical Studies, with the assistance of CIA University, plans to train 188 analysts in basic analysis and 844 analysts in specialty coursework.

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## Reengineering of Training Program Underway to Address Long-Term Needs

To better address the longer-term training needs of its entire workforce, the FBI is implementing a plan to restructure its training programs. In March 2003, Director Mueller approved a series of proposals contained in a reengineering project addressing FBI training activities, which included a goal of establishing an Office of Training and Development. This office, among other duties, would assess the career-long training needs of all employees, standardize training, and centralize the tracking of staff progress through the curriculum. The training reengineering plan calls for the Assistant Director of Training to function as the chief learning officer and to oversee both the Office of Training and Development and the FBI Academy. The FBI Academy will continue its primary mission of training new agents, as well as operating the College of Analytical Studies. While the FBI, in announcing its training reengineering plan, acknowledges the long-term benefits of enhancing training as an investment in human capital, it is too soon to tell how effective the plan will be in improving performance. And, as the overall human capital plan for the agency develops there will be a need to revise and enhance training plans. Appendix IV also provides additional details on the FBI's training reengineering plan.

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## Implementation of the Revised Attorney General's Guidelines

The revised *Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations* (the "Guidelines") are intended to provide the FBI greater investigative flexibility to enhance its ability to detect and prevent terrorist acts and other federal crimes. As traditional investigative constraints are eased, however, appropriate internal controls are needed to prevent investigative abuses and ensure the protection of civil liberties. The Guidelines themselves contain internal controls regarding specific investigative procedures and prohibited activities, and the FBI and DOJ have other internal control mechanisms in place to help ensure agents do not go beyond their stated authorities. Although private sector groups we interviewed have expressed concern regarding issuance of the new Guidelines, neither we nor they have identified any reported allegations or investigations of abuses under the new Guidelines authorities.

It should be noted that federal officials, including the FBI, have also received additional investigative authorities from laws such as the USA PATRIOT Act, and that FBI activities are also prescribed by various other Attorney General guidelines. Our review focused on certain provisions of the *Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*. Among other things, the revised Guidelines permit FBI agents to be more proactive by

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allowing certain investigative activities—such as visiting public places and events or conducting online searches—to be conducted outside the context of an investigation. We did not focus on internal controls associated with other statutes and guidelines relevant to FBI investigations. For example, we did not focus on the type of alleged abuses recently reported by the DOJ’s Office of the Inspector General (OIG) in June 2003 concerning the detention of 762 aliens who had been held in connection with the FBI terrorism investigations. Appendix V provides a brief overview of a few selected statutes and guidelines relevant to FBI investigations that were not a part of our analysis.

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### Revised Guidelines Allow FBI More Investigative Flexibility

Following the September 11, 2001, terrorist attacks on the United States, the Attorney General ordered a review of all investigative procedures related to national security and criminal matters in an effort to eliminate unnecessary investigative constraints and help prevent terrorism. As a result, in May 2002, the Attorney General issued a revised set of FBI domestic investigative guidelines—*The Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*—intended to provide consistent policy direction so that FBI investigations are confined to matters of legitimate law enforcement interest and protect individual rights, while also providing new investigative flexibility. The Guidelines also delegate the authority to initiate and approve certain types of investigations from FBI headquarters to FBI field offices. Appendix VI presents more details on selected key changes in the Guidelines.

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### Internal Controls Are Intended to Protect against FBI Noncompliance With the Guidelines

As we pointed out a year ago, the FBI should have appropriate internal controls in place to ensure that the new authorities permitted under the revised Guidelines are carried out in a manner that protects individual civil liberties. Internal controls serve as the first line of defense in preventing and detecting errors, and they provide an organization’s management with reasonable assurance of compliance with applicable laws and regulations. Thus, internal controls are a key component for ensuring that these new authorities are implemented in a manner that protects civil liberties. Under federal internal control standards,<sup>37</sup> a variety of internal control mechanisms—including training, supervision, and monitoring—may be

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<sup>37</sup>U.S. General Accounting Office, *Standards for Internal Control in the Federal Government*, [GAO-00-21.3.1](#) (Washington, D.C.: Nov. 1999).

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used by agencies to ensure compliance with applicable laws and regulations.

The Guidelines themselves are an internal control, establishing standards and requirements governing the FBI's investigative authority. In addition, the FBI has the following additional internal controls in place to help ensure compliance with the Guidelines and prevent agents from going beyond the authorities granted in the Guidelines:<sup>38</sup> (1) policies and procedures, which communicate to agents in detail the levels of authority and permissible activities; (2) training, which addresses civil liberties issues so that agents understand the limitations of their authority; and (3) supervision, which monitors agents' use of the new authorities. Finally, the FBI and DOJ have other internal control mechanisms in place to monitor FBI programs and personnel, as well as to identify and address alleged incidents of agent misconduct or abuse of civil liberties—specifically the FBI's internal inspection process and the investigation of allegations of abuse by the FBI's Office of Professional Responsibility (OPR) and DOJ's OIG. All of these mechanisms, of course, predate the revised Guidelines. To protect against civil liberties abuses in relation to the new investigative authorities allowed by the revisions, these controls must incorporate the revisions into their implementation.

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## Internal Controls Included in the Guidelines

In reviewing the key changes in the revised Guidelines, we looked for evidence of internal controls in the document itself to help ensure compliance and protect against potential civil liberties abuses. In some cases, the Guidelines revisions include very specific internal controls intended to ensure compliance. For example, the changes relating to the process for conducting preliminary inquiries<sup>39</sup> and terrorism investigations specify criteria for authorizing the activity, who is authorized to approve the activity, how long the activity may remain initially authorized until reapproval is required, and what notifications of the activity are required within and outside the FBI. On the other hand, changes related to the new investigative authorities are not as specific in terms of controls to ensure compliance. For example:

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<sup>38</sup>These controls are intended to ensure compliance with various FBI policies and procedures and are not specifically focused on the Guidelines. The Guidelines are just one of many areas that could be covered.

<sup>39</sup>The FBI conducts preliminary inquiries in order to determine the validity of an allegation of potential criminal activity and the need for a more in-depth investigative effort.

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- The FBI is now authorized to operate and participate in counterterrorism information systems (such as the Foreign Terrorist Tracking Task Force), and a periodic compliance review is required on any systems operated by the FBI. However, there is no indication of when such reviews should be conducted, what the review should entail (e.g., issues relating to access, use, or retention of data), and whether any reviews are required if the systems are not operated by the FBI.
  - The FBI is now authorized to visit public places or events, but retention of information from these visits is prohibited unless it relates to potential criminal or terrorist activity. However, there is no indication of whether or how agents are to document the activity, how supervisors are to ensure that the purpose of the activity is detecting or preventing terrorism, and how compliance with the prohibition on maintaining information is to be verified.

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## FBI and DOJ Internal Controls in Place

To implement the Guidelines themselves, the FBI and DOJ have other internal control mechanisms in place to help ensure FBI compliance with the Guidelines and help protect against potential abuses of individual civil liberties. Specifically:

- **Policies and procedures** – The FBI's policies and procedures manuals provide agents with additional guidance on conducting investigations. About 75 percent of the field agents who completed our questionnaire considered themselves to be at least somewhat familiar with the Guidelines. These agents indicated their familiarity came from a variety of sources, including a hard copy version of the Guidelines, the FBI's intranet Web site, electronic communications and briefings from FBI management, FBI program division or field office training, and supervisory on-the-job training. Additionally, the FBI is in the process of updating its Manual of Investigative Operations and Guidelines (MIOG) policies and procedures manuals to provide agents with additional guidance on implementation of the Guidelines.
- **Training** – Training on the Guidelines is included in all new agent training provided at the FBI Academy. Additional training and guidance, coordinated through the FBI's Office of General Counsel and field office legal coordinators, was made available to on-board agents after the Guidelines were issued. As of April 2003, just over one-half (about 55 percent) of the field agents who completed our questionnaire indicated they had received either formal or informal training on the Guidelines.

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- **Supervision** – Supervisory agents are to perform periodic case file reviews on all cases being worked by their agents to, among other things, monitor the progress of cases and verify compliance with applicable policies and procedures, such as the Guidelines. As of April 2003, nearly all the field agents who completed our questionnaire indicated that their supervisors performed case file reviews at least every 90 days—more often in some cases.
  - **Inspections** – FBI inspectors are to verify agents’ compliance with the Guidelines and other applicable policies and procedures by reviewing case files and supervisory case file reviews. In reviewing selected inspection reports completed since October 1999, we found evidence that such reviews were being performed. At the same time, we identified no findings in the inspection reports of noncompliance with or misuse of the new investigative authorities granted under the Guidelines.
  - **Allegations of abuse** – Both the FBI’s OPR and DOJ’s OIG have the authority to investigate allegations of FBI misconduct; the OIG also reviews all incoming FBI allegations to ensure the appropriate investigative response. Between October 2000 and March 2003, OPR investigated 1,579 cases of alleged FBI misconduct. The OIG investigated another 85 cases of alleged misconduct and 35 cases of alleged civil rights abuses between July 2001 and February 2003. However, based on the descriptions of the alleged offenses, we found no allegations or investigations that appeared to involve noncompliance with or abuse of the new investigative authorities granted under the Guidelines. In June 2003, the OIG reported on allegations of mistreatment and abuse of aliens detained on immigration charges in the aftermath of the September 11, 2001, terrorist attacks. These allegations did not relate to the FBI’s use of investigative authorities under the revised Guidelines and, in fact, the vast majority of these aliens were detained before the Guidelines were issued.

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No Reported Allegations or Investigations of Noncompliance with the New Guidelines Authorities

When the revised Guidelines were issued, private sector groups raised concerns about what they saw as a relaxing of investigative controls over the FBI, which represented a potential threat to individual civil liberties. In particular, they noted that the revised Guidelines allowed the FBI to use its new investigative authorities even in the absence of any prior indication of criminal activity. However, the private sector officials we met with could not provide any specific examples of the FBI abusing the new authorities granted under the Guidelines. Rather, their concerns largely



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stemmed from the belief that granting the FBI broader investigative authorities ignores the lessons of past abuses and is unlikely to result in tangible gains to law enforcement.<sup>40</sup> Officials from the FBI's OPR and DOJ's OIG told us they do not separately track allegations of noncompliance with the Guidelines; nor could they identify any specific cases that involved noncompliance with or abuse of the new investigative authorities granted under the Guidelines.

FBI headquarters officials indicated that the supervisory case file review process is the primary vehicle to ensure that agents comply with applicable policies and procedures—such as the Guidelines—and do not go beyond their stated authorities. Regarding the new authorities, FBI field office managers told us that the number of leads that require followup, plus the number of ongoing preliminary inquiries and investigations related to counterterrorism, have field agents fully engaged. This, according to FBI field office managers, does not afford agents time to visit public places and events or search the Internet absent a legitimate lead. A recent FBI informal survey of 45 of its field offices found that fewer than ten offices had conducted investigative activities at mosques since September 11, 2001. All but one of these visits was conducted pursuant to, or was related to, open preliminary inquiries or full investigations. Notwithstanding this, however, FBI headquarters officials are currently considering whether to require mandatory supervisory approval prior to allowing an agent to enter a public place or attend a public meeting.

Given the sensitivity of these issues and the FBI's history of investigative abuses, the FBI has been reaching out to communities to assure them that, despite the emphasis on counterterrorism, investigating civil rights abuses remains a high priority of the FBI. For example, FBI field offices have been contacting Muslim leaders for the purpose of establishing a dialogue and discussing procedures for alerting the FBI to civil rights abuses. In one field office we visited, discussions had recently been held with the Muslim community and its leaders covering topics related to homeland security, FBI employment, and community outreach. Throughout the FBI, over 500 such meetings occurred in the first 5 months after September 11, 2001. More recently, in February 2003, the FBI Director met with key leaders of

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<sup>40</sup>The original Guidelines were adopted in 1976, in large part to curb a history of FBI abuses—including surveillance and investigation of U.S. citizens when there was no credible evidence of criminal activity.

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national Arab-American, Muslim, and Sikh organizations to discuss the FBI's response to hate crimes and other civil rights issues.

The revised Guidelines are in their infancy in terms of implementation. While it is a good sign that we have not identified any reported allegations, investigations, or indications of abuse of the new investigative authorities, this is not a situation that should result in reduced vigilance on the part of DOJ or the Congress. Appendix VII presents more details about the internal controls discussed above.

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## Summary Observations

We continue to be ready to assist this and other congressional committees in any oversight of the FBI's implementation of its transformation efforts. Based on our work, there are specific areas related to the transformation of the FBI that seem to warrant continued monitoring. These areas include (1) the FBI's completion and implementation of a revised strategic plan; (2) the FBI's progress in integrating a human capital approach consistent with its mission and goals; (3) the long term impact on state and local law enforcement agencies, and the public, of the FBI's shift of staff resources away from drug enforcement and other criminal programs; and (4) FBI agents' compliance with the new investigative authorities granted under the revised *Attorney General's Guidelines*.

In closing, I would like to thank the FBI Director, DEA Administrator, and their staff for their cooperation in providing documentation and scheduling meetings needed to conduct our work. Especially, I would like to note the cooperation and candidness of FBI officials—managers, agents, and analysts—during our site visits to 14 field office locations.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared statement. I would be pleased to answer any questions you and the Subcommittee members may have.

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## GAO Contacts and Staff Acknowledgments

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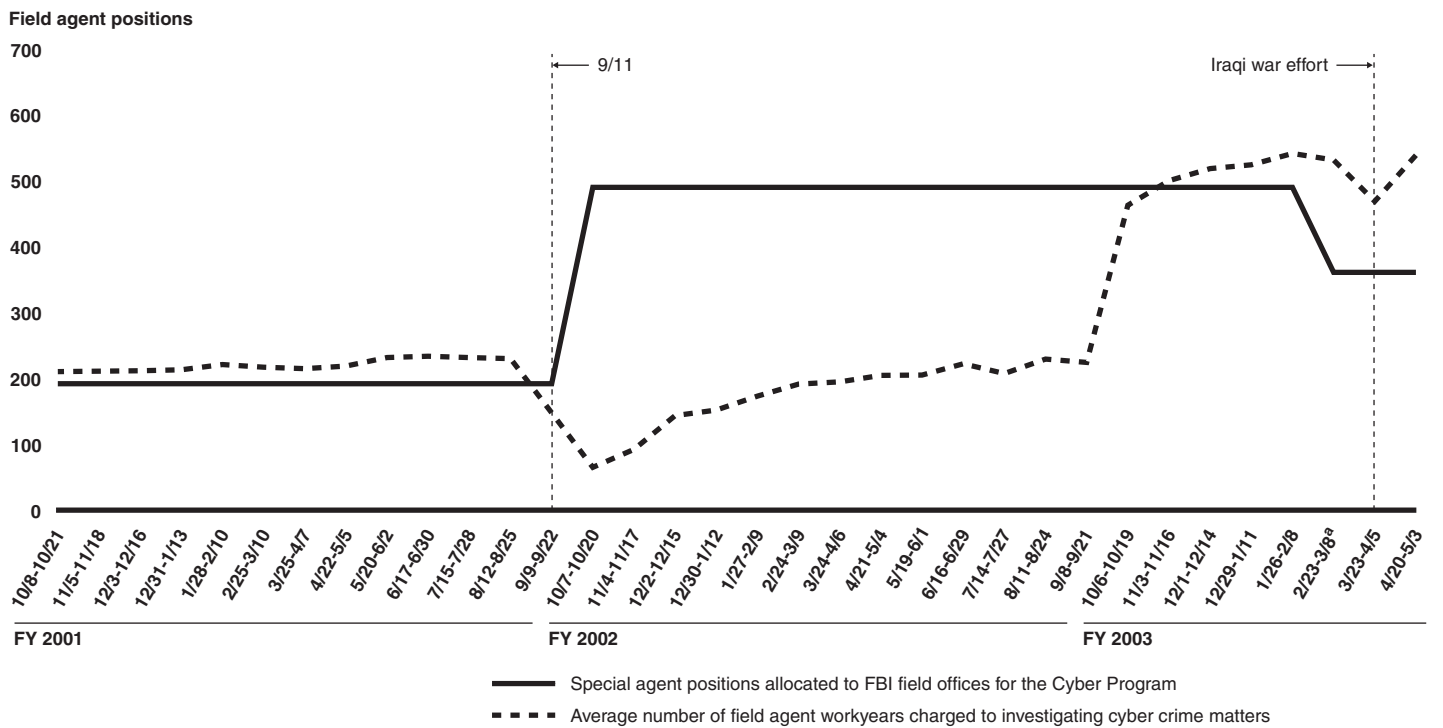
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Mary Catherine Hult, Lori Kmetz, E. Anne Laffoon, Ronald La Due Lake, Julio Luna, Jan Montgomery, Kay Muse, and Andrew O'Connell, Sarah E. Veale.

# Appendix I: Comparative Analysis of FBI Field Agent Positions and Agent Workyears Charged to Investigating Other Matters

As shown in figures 7 through 9, use of field agent workyears expended for the cyber crime, violent crime, and white-collar crime program areas were at or below their allocated staffing levels.<sup>1</sup>

**Figure 7: Comparative Analysis of FBI Field Agent Non-Supervisory Positions Allocated and Agent Workyears Charged to Investigating Cyber Crime Matters**

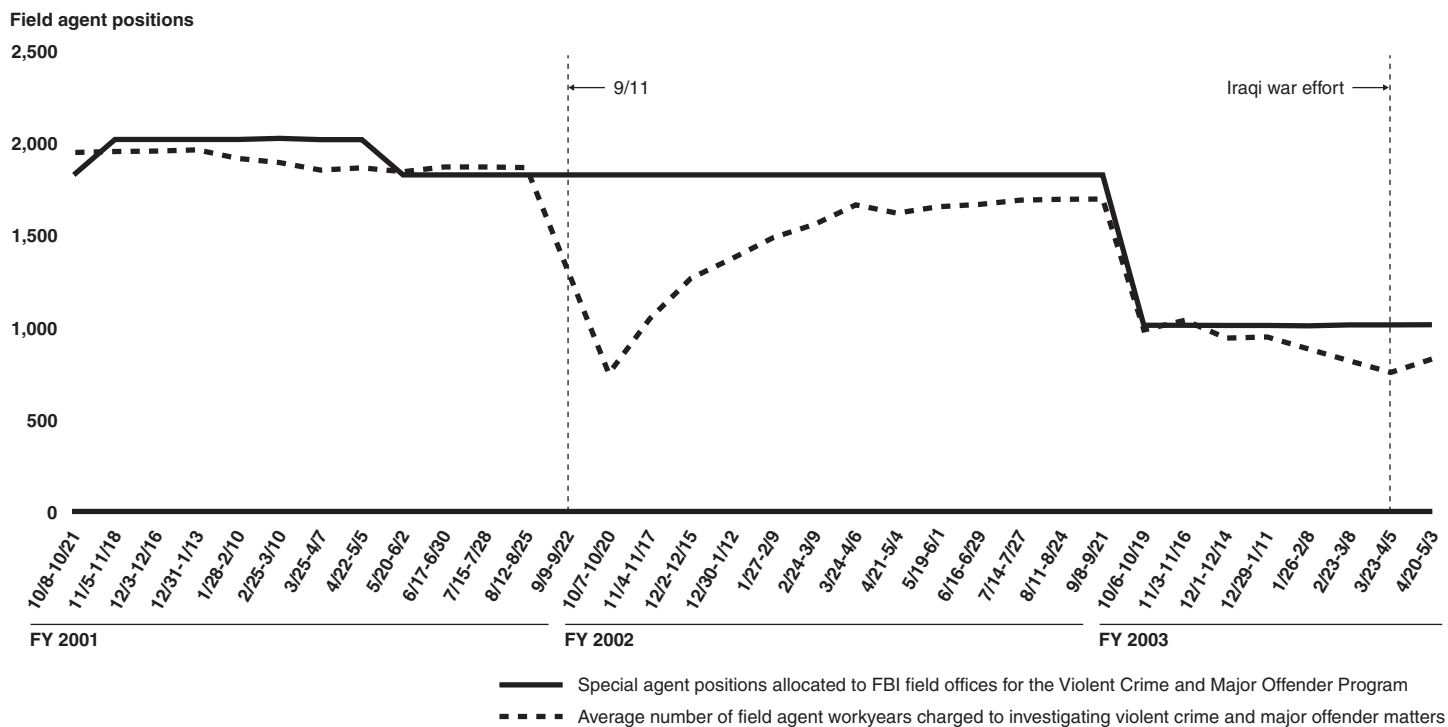


Source: GAO analysis of FBI TURK data.

<sup>a</sup>In March 2003, the FBI’s special agent positions in this program area were reduced by 307 positions as a result of the transfer of the Key Asset Program to the Department of Homeland Security.

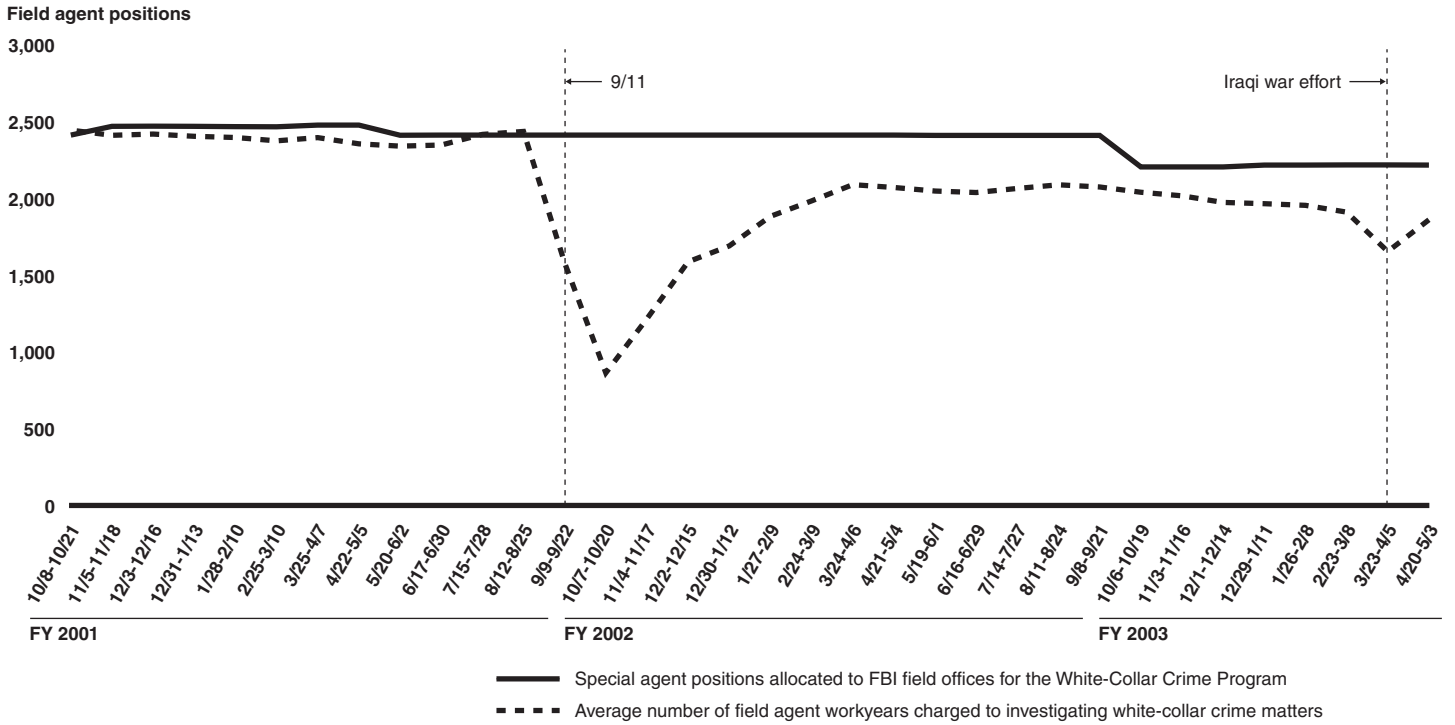
<sup>1</sup>We excluded details on changes in the counterintelligence program because they are classified.

**Figure 8: Comparative Analysis of FBI Field Agent Non-Supervisory Positions Allocated and Agent Workyears Charged to Investigating Violent Crime Matters**



Source: GAO analysis of FBI TURK data.

**Figure 9: Comparative Analysis of FBI Field Non-Supervisory Positions Allocated and Agent Workyears Charged to Investigating White-Collar Crime Matters**



Source: GAO analysis of FBI TURK data.

# Appendix II: FBI Special Agent Critical Skill Hiring

As shown in table 2, the FBI did not fully achieve its goal for the mix of critical skills for fiscal year 2002.

**Table 2: FBI Success in Hiring Special Agents with Critical Skills in Fiscal Year 2002**

Critical skill	Goal		Actual		Percent of goal
	Number	Percent	Number	Percent	
Law enforcement /military/law/other	232	25	589	64	254
Computer science/information technology	185	20	66	7	36
Foreign language proficiency	186	20	48	5	26
Physical sciences	93	10	72	8	77
Engineering	93	10	68	7	73
Military intelligence experience	46	5	26	3	57
Counterterrorism	46	5	15	2	33
Foreign counterintelligence	46	5	39	4	85
<b>Total</b>	<b>927</b>	<b>100</b>	<b>923</b>	<b>100</b>	

Source: GAO analysis of FBI data.

Note: Totals may not add due to rounding.

In fiscal year 2003, as shown in table 3, in all of its identified critical skill areas, except agents with foreign language skills, the FBI has already achieved over half of its stated goals for those areas.

**Table 3: FBI Success in Hiring Special Agents with Critical Skills in Fiscal Year 2003**

Critical skill	Goal		Actual (as of 6/1/03)		Percent of goal
	Number	Percent	Number	Percent	
Law enforcement/military/law/other	165	25	184	33	112
Computer science/information technology	133	20	114	21	86
Foreign language proficiency	133	20	45	8	34
Physical sciences	66	10	75	14	114
Engineering	66	10	52	9	79
Intelligence <sup>a</sup>	99	15	80	15	81
<b>Total</b>	<b>663</b>	<b>100</b>	<b>550</b>	<b>100</b>	<b>83</b>

Source: GAO analysis of FBI data.

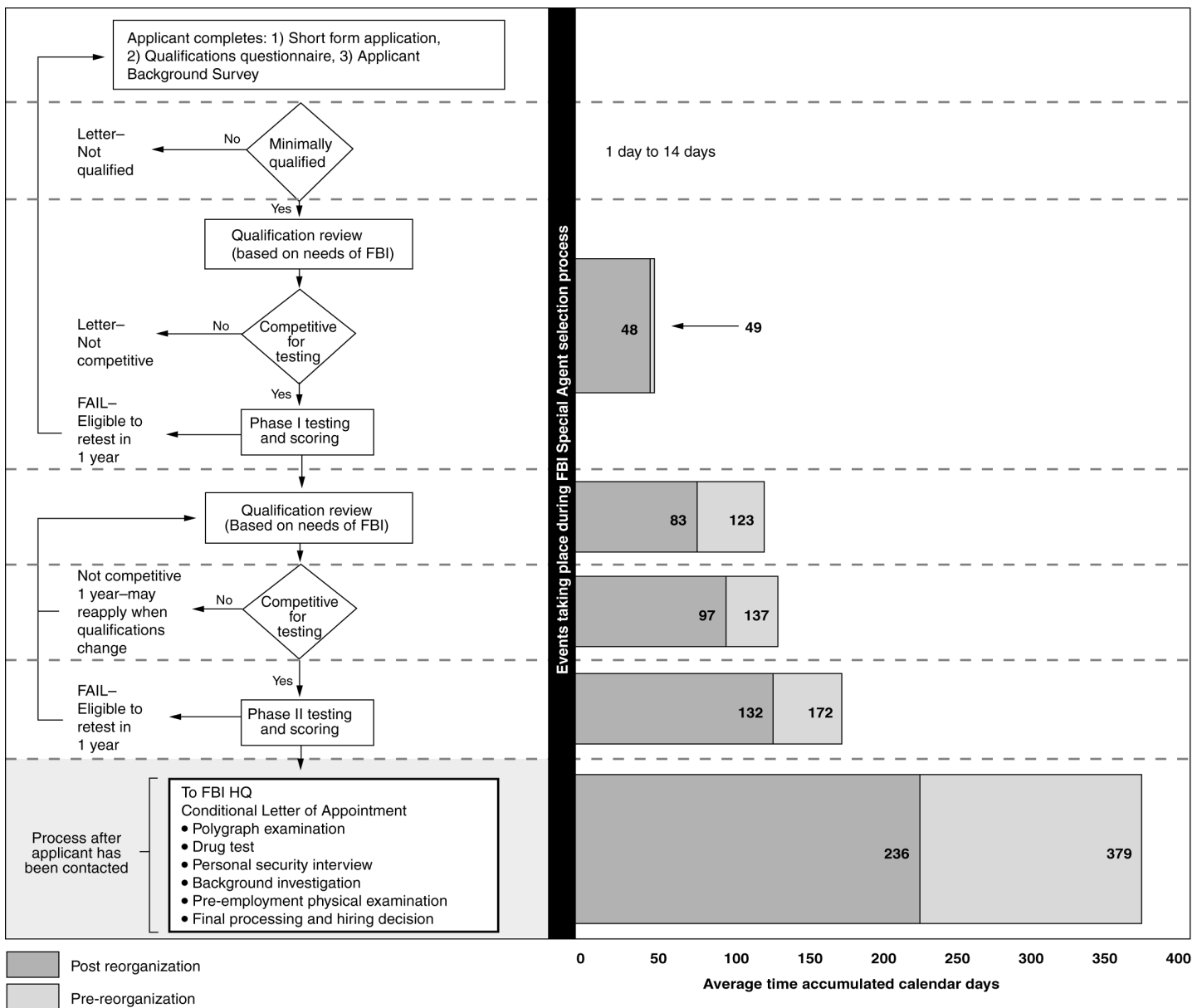
Note: Totals may not add due to rounding.

<sup>a</sup>In fiscal year 2003, the FBI combined military intelligence experience, counterterrorism, and foreign counterintelligence into the intelligence critical skill.

# Appendix III: FBI Special Agent Hiring Process

As shown in figure 10, the FBI reduced the minimum time it takes to hire a special agent from 379 days to 236 days.

**Figure 10: FBI Hiring Process and Timeline for Special Agent Positions**



Source: GAO generated based on FBI data.



# Appendix IV: FBI’s Training in the Priority Areas

## Additional Funding Provided to FBI Priority Area Programs

The Conference report for the Department of Justice Appropriation Act, 2003 (P.L. 108-7, 117 Stat. 49 (2003)) indicates that the Conferees provided \$10 million above the FBI’s budget request for training needs.<sup>1</sup> Table 4 shows how the FBI plans to allocate these funds by program.

Table 4: FBI Workforce Training Requirements and Spending Plan for Priority Programs

FBI training program	Curriculum development	Distance learning	Courseware development	University education program	Classroom training expenses	FBI Academy classroom upgrades	Program total
Cyber crime	\$215,275	\$163,723	\$71,758	0	\$768,420	0	\$1,219,176
Counter-terrorism	1,065,719	810,508	355,240	0	477,000	0	2,708,467
Counter-intelligence	532,860	405,254	177,620	0	308,000	0	1,423,734
Analytical training	586,146	445,779	195,382	0	265,000	0	1,492,307
Other training	600,000	456,316	200,000	\$300,000	0	\$1,600,000	3,156,316
<b>Total</b>	<b>\$3,000,000</b>	<b>\$2,281,580</b>	<b>\$1,000,000</b>	<b>\$300,000</b>	<b>\$1,818,420</b>	<b>\$1,600,000</b>	<b>\$10,000,000</b>

Source: FBI.

## Revisions to the FBI’s Training Programs in Priority Areas

The FBI has taken steps to provide revised training to FBI personnel assigned to the priority areas. Table 5 summarizes specific revisions to the training programs offered to new agents in the priority areas, agents assigned to priority areas, other agents involved in counterterrorism work, and analysts.

<sup>1</sup>H.R. Conf. Rep. No. 108-10, at 617 (2003).

**Table 5: Selected Revisions to FBI Training Programs in the Priority Areas Since September 11, 2001**

Staff	Start date	Number to be trained in FY2003	Description of revisions
New agent training in counterterrorism and counterintelligence	April 2003	425 estimate <sup>a</sup>	Integrated international terrorism fact pattern used throughout training at Quantico and other coursework.
New agents assigned to counterterrorism and counterintelligence	On-going, as assigned	40 estimate <sup>b</sup>	CD-ROM, depending on assignment. New agents assigned to counterintelligence must also complete the 4-week course given to agents reprogrammed to counterintelligence.
Agents reprogrammed to counterterrorism	February 2003	480 <sup>c</sup>	CD-ROM, "Introduction to International Terrorism" 1-week course, lecture-based.
Agents reprogrammed to counterintelligence	October 2002	213	CDROM, "Introduction to Counterintelligence" 4-week interactive course.
Agents participating in Joint Terrorism Task Force (JTTF)	March 2003	224	2-day course. Prepares trainer to provide 8-hours of training for FBI and JTTF members in the field.
Intelligence analysts	October 2001	1,032 <sup>d</sup>	5-6 week Basic Intelligence Research Specialist course. CIA assistance in course development and instruction in at least 2 weeks of the course.

Source: GAO analysis of FBI data.

<sup>a</sup>Prior to revising the new agent counterterrorism and counterintelligence training, between October and March 2003, the FBI Academy added 32 hours of counterterrorism and counterintelligence-related training to the new agent-training curriculum. During this timeframe, 373 new agents received an additional 32 hours of training.

<sup>b</sup>Approximately 5 percent of each new agent class is assigned to counterterrorism or counterintelligence squads immediately following graduation from the FBI Academy.

<sup>c</sup>There were 480 agents permanently reassigned to counterterrorism; however, according to FBI officials, SACs have the authority to designate which of these agents need the revised counterterrorism training. FBI officials said that they are planning to extend classes in Basic International Terrorism Operations to the end of the calendar year to ensure that all agents who need the training will be provided an opportunity to take the class.

<sup>d</sup>The 1,032 analysts are to include 188 to be trained in basic analysis and 844 to be trained in specialty analysis. Additionally, in fiscal year 2002, 55 analysts were trained in basic analysis and 138 analysts trained in specialty coursework.

## Current Training Offered to FBI Employees in the Priority Areas

The FBI's training programs in the priority areas, as of June 1, 2003, are summarized in table 6.

**Table 6: Summary of Training Provided in the Priority Areas, as of June 1, 2003**

Category of staff	Summary of training provided	Examples of courses offered
<b>New agent training at FBI Academy</b>		
All new agents	<ul style="list-style-type: none"> <li>• 17 weeks (684 hours)</li> <li>• Integrated case scenario</li> <li>• Independent study project</li> </ul>	<ul style="list-style-type: none"> <li>• Legal Instruction, Ethics, Leadership</li> <li>• Civil Rights, Firearms, Interviewing</li> <li>• Behavioral Science, Forensic Science</li> <li>• Concepts and Tactics for Survival</li> <li>• Undercover Operations, Surveillance</li> </ul>
Counterterrorism/counterintelligence	110 hours of Middle Eastern Criminal Enterprise case study, domestic terrorism-related training <ul style="list-style-type: none"> <li>• Integrated classroom investigative, counterterrorism and counterintelligence training</li> <li>• Additional hours of reading</li> </ul>	<ul style="list-style-type: none"> <li>• Investigating Criminal Enterprises</li> <li>• Middle Eastern Cultural Issues</li> <li>• International Terrorism</li> <li>• Asset Development</li> </ul>
Cyber	2-hour course specifically on Cyber Division investigations  25 hours of general computer training <ul style="list-style-type: none"> <li>• 4 to 8 hours on cyber crime</li> </ul>	<ul style="list-style-type: none"> <li>• Cyber Crime Exercise</li> <li>• Computer Skills Development/Data Analysis</li> </ul>
<b>New agent training for agents assigned after completion of FBI Academy</b>		
Counterterrorism/counterintelligence	<ul style="list-style-type: none"> <li>• CD-ROM, 15-hours additional training</li> <li>• 4-week interactive course for new agents assigned to counterintelligence</li> </ul>	<ul style="list-style-type: none"> <li>• Introduction to International Terrorism; Introduction to Counterintelligence</li> <li>• Counterintelligence Operations</li> </ul>
Cyber	<ul style="list-style-type: none"> <li>• 1-week, required introductory course</li> <li>• Continuing education include 8 core courses from entry level to advanced curriculum offered</li> </ul>	<ul style="list-style-type: none"> <li>• Introduction to Cyber Crime Investigations</li> </ul>
<b>Agents shifted to work in priority areas</b>		
Counterterrorism	<ul style="list-style-type: none"> <li>• 1-week course, lecture-based</li> </ul>	<ul style="list-style-type: none"> <li>• Basic International Terrorism Operations</li> </ul>
Counterintelligence	<ul style="list-style-type: none"> <li>• 4-week course, interactive course for new agents assigned to counterintelligence</li> </ul>	<ul style="list-style-type: none"> <li>• Counterintelligence Operations Course</li> </ul>
Cyber	<ul style="list-style-type: none"> <li>• 1-week, introductory course required</li> <li>• Continuing education includes 8 core courses from entry level to advanced</li> </ul>	<ul style="list-style-type: none"> <li>• Introduction to Cyber Crime Investigations</li> </ul>

Category of staff	Summary of training provided	Examples of courses offered
<b>Agents</b>		
All agents	<ul style="list-style-type: none"> <li>All agents must take at least 15 hours of training per year</li> <li>Training is offered at Quantico, regionally, and in FBI field offices<sup>a</sup></li> <li>Agents must apply and get approved</li> </ul>	<ul style="list-style-type: none"> <li>Arabic Romanization Training</li> <li>Bloodborne Pathogens</li> <li>Financial Underpinnings of Crime</li> <li>Hate Crimes</li> </ul>
Agents participating in JTTF	<ul style="list-style-type: none"> <li>8-hours train-the-trainer course on counterterrorism</li> <li>Course material will then be offered to FBI field office personnel and JTTF members<sup>b</sup></li> </ul>	<ul style="list-style-type: none"> <li>Counterterrorism awareness training</li> </ul>
<b>Intelligence analysts</b>		
All analysts	<ul style="list-style-type: none"> <li>College of Analytical Studies provides 5-6 week course on basic analysis</li> <li>CIA assisted in development of curriculum and teaches 2 weeks</li> </ul>	<ul style="list-style-type: none"> <li>Analytical Thinking and Presentation</li> <li>Arabic Romanization</li> <li>Asset Vetting</li> </ul>
Analysts, with 2 years or less experience	<ul style="list-style-type: none"> <li>College of Analytical Studies provides coursework</li> </ul>	<ul style="list-style-type: none"> <li>Basic Intelligence Research Specialist (IRS) Course</li> <li>Lexis/Nexis, PenLink</li> <li>Project Gateway/Basic Financial Analysis</li> </ul>
Advanced Analysts, with 2 years or more experience	<ul style="list-style-type: none"> <li>College of Analytical Studies provides coursework</li> </ul>	<ul style="list-style-type: none"> <li>Statement Analysis for the IRS</li> <li>Strategic Thinking</li> <li>Writing National Level Threat Assessments</li> </ul>

Source: GAO analysis of FBI data.

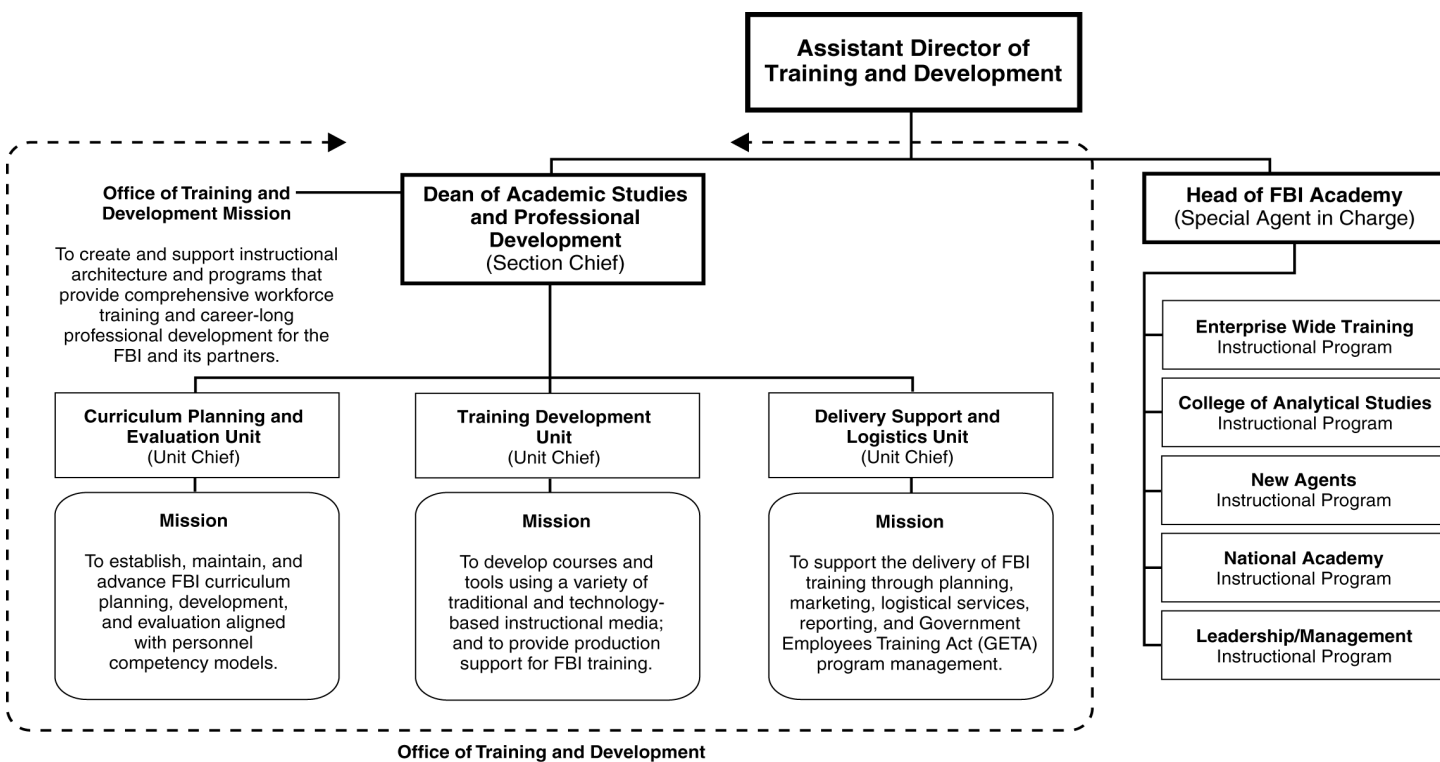
<sup>a</sup>Course offerings are subject to change due to FBI priorities, according to FBI officials.

<sup>b</sup>This may include state and local law enforcement officers.

## FBI Revised Overall Training Program to Enhance Training to Entire Workforce

The FBI has begun to implement a plan to restructure its training program. As reflected in figure 11, the plan established several units to establish curriculum, develop courses and tools, and deliver training for all FBI personnel, special agents, as well as support staff.

**Figure 11: Proposed Training Division Organization Chart**



Source: FBI.

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# Appendix V: Selected Statutes and Guidelines Relevant to FBI Investigations

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## USA PATRIOT Act

To provide the intelligence community and law enforcement with additional means to fight terrorism and prevent future terrorist attacks, Congress enacted a wide range of investigative enhancements in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act.<sup>1</sup> Among other things, the USA PATRIOT Act provides federal officials with enhanced surveillance authorities to intercept wire, oral, and electronic communications relating to terrorism. The act also provides the authority to seize voice-mail messages pursuant to warrants. The act further contains a number of provisions authorizing information sharing between intelligence and law enforcement agencies—such as the sharing of foreign intelligence information obtained as part of a criminal investigation with any federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official in the performance of his or her official duties.

The USA PATRIOT Act also seeks to enhance federal law enforcement agency abilities to, for example, investigate and combat financial-related crimes by adding new money laundering and counterfeiting crimes and by increasing related criminal penalties. The USA PATRIOT Act further seeks to strengthen federal criminal laws against terrorism by, for example, making it a crime to engage in terrorist attacks or other acts of violence against mass transportation systems. The act also made it a crime to harbor or conceal terrorists where a person knows, or has reasonable grounds to believe, that the person harbored or concealed has committed or is about to commit a specified terrorism-related offense.

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## Foreign Intelligence Surveillance Act of 1978

The Foreign Intelligence Surveillance Act of 1978,<sup>2</sup> (FISA) as amended, established legal standards and a process that the Attorney General, including the FBI, must use to obtain authorization for electronic surveillance and physical searches when seeking foreign intelligence and counterintelligence information within the United States. FISA also created a special court—the Foreign Intelligence Surveillance Court—with jurisdiction to hear applications for and grant orders approving FISA surveillance and searches. FISA orders may be issued, in general, upon a FISA Court finding of probable cause to believe that a suspect target is a foreign power or an agent of a foreign power, and that the places at which

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<sup>1</sup>P.L. 107-56, 115 Stat. 272 (2001).

<sup>2</sup>P.L. 95-511, 92 Stat. 1783 (1978).

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the surveillance is directed are being used, or are about to be used, by such targets.

The USA PATRIOT Act amended various FISA provisions to authorize, for example, roving surveillance under FISA to, in essence, follow a person who uses multiple communication devices or locations, where the FISA court finds that the actions of the target may have the effect of thwarting the identification of a specified person. Another amendment allows senior level FBI personnel, in certain circumstances involving international terrorism or clandestine intelligence, to apply to the FISA Court for an order for the production of tangible items—such as books, records, papers, or documents.

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## Selected Attorney General Guidelines

When conducting investigations, the FBI is subject to various sets of guidelines established by the Attorney General.<sup>3</sup> *The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations* provide general standards and procedures for the FBI's conduct of criminal investigations. They are designed to govern the circumstances under which such investigations may be begun, the permissible scope, duration, subject matters, and objectives of such investigations. Under these guidelines, for example, the FBI may conduct investigations when the facts and circumstances reasonably indicate that a federal crime had been, is being, or will be committed. Preliminary inquiries may be performed when there is not yet a reasonable indication of criminal activities but where information requires further scrutiny beyond a prompt and limited checking of initial leads.

The Attorney General has also issued a separate set of guidelines prescribing the FBI's investigative authority related to international terrorism—that is, terrorist activities occurring totally outside the United States or which transcend national boundaries. *The Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations* (significant portions of which are classified) govern all foreign intelligence, foreign counterintelligence, foreign intelligence support activities, and intelligence investigations of international terrorism. These guidelines also apply to FBI investigation of

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<sup>3</sup>Other guidelines include the Attorney General's Guidelines on FBI Undercover Operations, the Attorney General's Guidelines Regarding the Use of Confidential Informants, and the Attorney General's Procedures for Lawful Warrantless Monitoring of Verbal Communications.

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espionage statutes and investigations on behalf of, or in cooperation with,  
foreign governments.



# Appendix VI: Comparison of the 2002 and 1989 Attorney General's Guidelines

Table 7 presents a side-by-side comparison of the key changes in the 2002 Guidelines, as compared with the most recent previous version of the Guidelines, which were issued in 1989 (and amended slightly in 1994).

**Table 7: Comparison of Selected Changes between the 2002 and 1989 Attorney General's Guidelines**

	1989 Attorney General's Guidelines	2002 Attorney General's Guidelines
<b>Section I: General Principles</b>		
	Preliminary inquiries and investigations shall be conducted with as little intrusion into individual privacy as needs permit.	No significant change except: <ul style="list-style-type: none"> <li>• FBI shall not hesitate to use any authorized investigative technique.</li> <li>• Intrusive techniques are warranted based on seriousness of crime or strength of information indicating its commission.</li> </ul>
	Inquiries and investigations should not be initiated based solely on the exercise of constitutionally protected rights.	No significant change.
<b>Section II: General Crimes Investigations</b>		
<b>Preliminary inquiry</b>		
General authority	May be initiated in response to information indicating possible criminal activity.  Measured investigative response, as little intrusion as possible, and short duration.	No significant change except: <ul style="list-style-type: none"> <li>• duration is subject only to the maximum specified limitation on length.</li> </ul>
Authorizations	Authorized for up to 90 days. Renewal for 30-day periods. FBI HQ grants all renewals, based on a written request and statement of reasons.	Authorized for up to 180 days. Renewal for 90-day periods. Field office Special Agent-in-Charge (SAC) may grant two renewals, based on a statement of reasons.  FBI HQ may grant further renewals, based on a written request and statement of reasons.
Investigative techniques	Matter of judgment considering: <ul style="list-style-type: none"> <li>• intrusiveness, privacy concerns, and damage to reputation;</li> <li>• seriousness of possible crime, and</li> <li>• strength of evidence.</li> </ul> All lawful techniques authorized except : <ul style="list-style-type: none"> <li>• mail covers</li> <li>• mail openings</li> <li>• nonconsensual electronic surveillance</li> </ul> Specified techniques require no FBI supervisory agent approval.  Other lawful techniques require FBI supervisory agent approval, except in exigent circumstances.	No significant change except matter of judgment should also consider: <ul style="list-style-type: none"> <li>• objectives and available resources.</li> </ul> All lawful techniques authorized except: <ul style="list-style-type: none"> <li>• mail openings</li> <li>• nonconsensual electronic surveillance</li> </ul> No significant change.

	<b>1989 Attorney General's Guidelines</b>	<b>2002 Attorney General's Guidelines</b>
	Generally should be less intrusive than full investigation.	Given a choice, consider less intrusive methods if they would be just as timely and effective.
	Highly intrusive techniques should be approved only in compelling circumstances.	Do not hesitate to use intrusive techniques if warranted by the circumstances.
<b>Full investigation</b>		
General authority	May be initiated when facts or circumstances reasonably indicate that a crime has, is being, or will be committed.	No significant change.
	May be conducted to prevent, solve, or prosecute such activity.	
	For future criminal acts, facts and circumstances must reasonably indicate that such a crime will occur in the future.	No significant change.
Authorizations	FBI supervisory agent may authorize.	No significant change.
	Notification to U.S. Attorney, DOJ, and FBI HQ required for sensitive criminal matters.	
	No specified limit on duration.	
Investigative techniques	See section IV below.	See section IV below.
Section III: Criminal Intelligence Investigations		
<b>Racketeering enterprise investigation</b>		
General authority	May be initiated when two or more persons are engaged in racketeering for monetary or commercial gain.	May be initiated when two or more persons are engaged in racketeering as defined in federal racketeering statutes.
	Racketeering must involve violence, extortion, narcotics, or public corruption.	If federally-defined terrorism is involved, investigation is to be conducted under terrorism enterprise investigative standards.
	Otherwise, requires approval by FBI Director and Attorney General (AG).	
Authorizations	SAC may authorize defined racketeering, with notification to AG or designee ( <i>1994 amendment</i> ). Otherwise requires approval by FBI Director with AG concurrence.	SAC may authorize based on written statement of facts, with notification to FBI HQ, DOJ Criminal Division, U.S. Attorney, and AG.
	AG may request status reports.	DOJ may request status reports.
	Authorized for up to 180 days.	Authorized for up to 1 year.
	Renewal for up to 180-day periods.	Renewal for up to 1-year periods.
	FBI HQ grants all renewals, with AG concurrence if needed initially.	SAC may grant renewals, with notification to FBI HQ, DOJ Criminal Division, and AG.
Investigative techniques	See section IV below.	See section IV below.

	1989 Attorney General's Guidelines	2002 Attorney General's Guidelines
<b>Terrorism enterprise investigation</b>		
General authority	Domestic security/terrorism investigation may be initiated when two or more persons are involved in: <ul style="list-style-type: none"> <li>• furthering political or social goals through force or violence and a violation of federal criminal law.</li> </ul>	Terrorism enterprise investigation may be initiated when two or more persons are involved in: <ul style="list-style-type: none"> <li>• furthering political or social goals through force or violence and a violation of federal criminal law,</li> <li>• terrorism that involves a violation of federal law, or</li> <li>• committing a federal act of terrorism as defined in federal law.</li> </ul>
Authorizations	FBI HQ may authorize, with notification to DOJ Office of Intelligence Policy Review (OIPR).	SAC may authorize, with notification to FBI HQ, DOJ Criminal Division and OIPR, U.S. Attorney, and AG.
	AG may request status reports.	DOJ may request status reports.
	Authorized for up to 180 days.	Authorized for up to 1 year.
	Renewal for up to 180-day periods.	Renewal for up to 1-year periods.
	FBI HQ grants all renewals.	SAC may grant renewals, with notification to FBI HQ, DOJ Criminal Division, OIPR, and AG.
Investigative techniques	See section IV below.	See section IV below.
<b>Section IV: Investigative Techniques</b>		
General authority	Unless otherwise indicated, all lawful techniques are authorized.	No significant change.
	Matter of judgment considering: <ul style="list-style-type: none"> <li>• intrusiveness, privacy concerns, and damage to reputation;</li> <li>• seriousness of possible crime, and</li> <li>• strength of evidence</li> </ul>	No significant change except matter of judgment should also consider: <ul style="list-style-type: none"> <li>• objectives and available resources</li> </ul>
	Before employing a technique, consider whether less intrusive means could be used as timely and effectively.	Given a choice of techniques, consider less intrusive methods if they would be just as timely and effective.
		Do not hesitate to use intrusive techniques if warranted by the circumstances.
Specific techniques	Specific requirements or restrictions apply to use of the following techniques: <ul style="list-style-type: none"> <li>• Confidential informants,</li> <li>• Undercover operations,</li> <li>• Nonconsensual electronic surveillance,</li> <li>• Pen register/trap and trace,</li> <li>• Access to stored wire and electronic records,</li> <li>• Consensual electronic surveillance,</li> <li>• Search and seizure, and</li> <li>• Persons represented by counsel.</li> </ul>	Specific requirements or restrictions apply to use of the following techniques: <ul style="list-style-type: none"> <li>• Same as 1989 guidelines, plus</li> <li>• Classified investigative technologies.</li> </ul>

	<b>1989 Attorney General's Guidelines</b>	<b>2002 Attorney General's Guidelines</b>
	<p>If undercover or informant activities may influence an organization's exercising of its 1st Amendment rights:</p> <ul style="list-style-type: none"> <li>• Must be approved by FBI HQ, with notification to DOJ.</li> </ul>	<p>If undercover or informant activities relate to an organization's exercising of its 1st Amendment rights:</p> <ul style="list-style-type: none"> <li>• Must fully comply with AG's guidelines on undercover operations and confidential informants.</li> </ul>
	<p>For consensual electronic surveillance:</p> <ul style="list-style-type: none"> <li>• Advance authorization must be obtained from SAC and U.S. Attorney</li> </ul>	<p>For consensual electronic surveillance:</p> <ul style="list-style-type: none"> <li>• Advance authorization must be obtained from SAC or Assistant SAC, and U.S. Attorney or Assistant AG.</li> </ul>
<b>Section V: Dissemination and Maintenance of Information</b>		
Information systems	Not included.	FBI shall maintain database of inquiries and investigations that permits retrieval of status and subjects.
<b>Section VI: Counterterrorism Activities and Other Authorizations</b>		
Counterterrorism activities	Not included.	<p>Regarding information systems:</p> <ul style="list-style-type: none"> <li>• FBI may operate and participate in identification, tracking, and information systems for purposes of detecting, prosecuting, or preventing terrorism.</li> <li>• System information may come from sources permitted by law, prior or ongoing investigations, government sources, public sources, and voluntary private sources.</li> <li>• Systems operated by the FBI shall be reviewed periodically.</li> </ul>
	Not included.	<p>Regarding public places and events:</p> <ul style="list-style-type: none"> <li>• FBI may visit any place and attend any event that is open to the public, for purposes of detecting or preventing terrorism.</li> <li>• No information may be retained from such visits unless it relates to potential criminal or terrorist activity.</li> </ul>
Other authorizations	Not included.	<p>Regarding general topical research:</p> <ul style="list-style-type: none"> <li>• Online sites and forums may be searched and accessed on subject areas generally useful to investigations.</li> <li>• Research is not allowed on individual names or identifiers except where incidental to topical research.</li> </ul>
	Not included.	Online resources are generally authorized for the purposes of detecting or preventing terrorism or other criminal activities.
	Not included.	FBI may prepare general reports and assessments on terrorism or other criminal activities for purposes of strategic planning or investigative support.

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	1989 Attorney General's Guidelines	2002 Attorney General's Guidelines
Privacy and other limitations	Not included.	FBI may not maintain files on individuals solely for the purpose of monitoring First Amendment activities or other rights protected by the Constitution.
	Not included.	All law enforcement activities must have a valid law enforcement purpose as described in the Guidelines.

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Source: GAO analysis of the 2002 and 1989 *Attorney General's Guidelines*.

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# Appendix VII: Internal Controls to Protect Against Civil Liberties Abuses

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The following sections present more detail about (1) the extent to which internal controls have been incorporated into the *Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations*, (2) other internal control mechanisms that are in place to ensure FBI compliance with the Guidelines,<sup>1</sup> and (3) concerns about how the Guidelines may adversely affect the protection of civil liberties.

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## Internal Controls Included in the Guidelines

The Guidelines themselves are an internal control—establishing the Attorney General's parameters for the FBI's investigative authority. For example, the internal controls described in table 8 are designed to ensure that only valid, authorized transactions and events—in this case, investigative activities such as preliminary inquiries<sup>2</sup> and terrorism enterprise investigations—are initiated or entered into by the FBI. These controls specify who is authorized to approve the activity, how long the activity may remain authorized until reapproval is required, and what notifications of the activity are required within and outside the FBI, thereby facilitating the verification of compliance.

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<sup>1</sup>These internal control mechanisms are intended to ensure compliance with various FBI policies and procedures and are not specifically focused on compliance with the Guidelines. The Guidelines are just one of many policies and procedures that could be covered.

<sup>2</sup>Preliminary inquiries are undertaken in order to determine the validity of an allegation of potential criminal activity and the need for a more in-depth investigative effort.

**Table 8: Controls in the Guidelines Relating to Authorization and Renewal of Preliminary Inquiries and Terrorism Enterprise Investigations**

	Authorizing official		Authorized length		Required notifications	
	Initiation	Extension	Initiation	Extension	Initiation	Extension
Preliminary inquiries	FBI supervisor	<ul style="list-style-type: none"> <li>• SAC, first two extensions</li> <li>• FBI HQ, any further extensions</li> </ul>	180 days	90 days	<ul style="list-style-type: none"> <li>• Required for “sensitive criminal matters” only</li> <li>• SAC must notify U.S. Attorney or other DOJ official</li> </ul>	None required
Terrorism Enterprise investigations	SAC	SAC	1 year	1 year	• SAC must notify FBI HQ	• SAC must notify FBI HQ
					• FBI HQ must notify DOJ Criminal Division and OIPR, and any affected U.S. Attorney	• FBI HQ must notify DOJ Criminal Division
					• DOJ Criminal Division must notify AG and Deputy AG	• DOJ Criminal Division must notify AG and Deputy AG

Source: GAO analysis of the 2002 *Attorney General's Guidelines*.

Similarly, the controls described in table 9 are also designed to ensure that only valid, authorized transactions and events are initiated or entered into by the FBI—in this case, investigative techniques, including the new counterterrorism authorities granted under the revised Guidelines.

**Table 9: Controls in the Guidelines Relating to Authorized and Prohibited Investigative Activities**

	<b>Authorized activities or techniques</b>	<b>Prohibited activities or techniques</b>
Preliminary inquiries	<ul style="list-style-type: none"> <li>All lawful techniques except those specifically prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>Mail openings.</li> <li>Nonconsensual electronic surveillance.</li> </ul>
Terrorism enterprise investigations	<ul style="list-style-type: none"> <li>All lawful techniques.</li> </ul>	<ul style="list-style-type: none"> <li>None identified.</li> </ul>
Counterterrorism activities and other authorizations	<ul style="list-style-type: none"> <li>For counterterrorism purposes, FBI may operate and participate in identification, tracking, and information systems containing data from FBI, government, public, or private sources.</li> </ul>	<ul style="list-style-type: none"> <li>None identified, but systems must be periodically reviewed to ensure compliance with applicable laws, regulations, policies, and guidelines.</li> </ul>
	<ul style="list-style-type: none"> <li>For counterterrorism purposes, FBI is authorized to visit places and events that are also open to the public.</li> </ul>	<ul style="list-style-type: none"> <li>Information from such visits may not be retained unless it relates to potential criminal or terrorist activity.</li> </ul>
	<ul style="list-style-type: none"> <li>FBI is authorized to conduct topical and online research, including accessing online sites and forums.</li> </ul>	<ul style="list-style-type: none"> <li>General online or topical research may not be conducted on individual names or identifiers, except where incidental to topical research.</li> </ul>
	<ul style="list-style-type: none"> <li>Authorized activities must have a valid law enforcement purpose and conform to applicable laws, regulations, policies, and guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>Maintaining files on individuals solely for the purpose of monitoring activities protected by the 1st Amendment or other rights secured by the Constitution is prohibited.</li> </ul>

Source: GAO analysis of the 2002 Attorney General's Guidelines.

Regarding counterterrorism activities and other authorizations as identified in table .9 above, the controls associated with these authorities are less specific when compared with those associated with the initiation and renewal of preliminary inquiries and terrorism enterprise investigations, as described in table 7. For example:

- Regarding the FBI's authorization to operate and participate in counterterrorism information systems, there is no indication of how agents are to document this activity, nor how supervisors are to ensure that the purpose of the activity is detecting or preventing terrorism. Further, there is no indication of when such systems should be reviewed, what these reviews should entail (e.g., verifying compliance with access, use, or data retention requirements), and whether any such reviews are required if systems accessed are not operated by the FBI.



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- Regarding the FBI's authorization to visit public places or events, there is no indication of how agents are to document the activity, how supervisors are to ensure that the purpose of the activity is detecting or preventing terrorism, and how compliance with the prohibition on maintaining information is to be verified.

FBI headquarters officials said that agents are not required to obtain supervisory approval before accessing terrorism information systems, but they are encouraged to seek legal guidance to ensure they comply with applicable guidelines. Also, the process of creating such systems involves reviews for compliance with the Privacy Act and other applicable regulations, and any data that are collected, used, or disseminated are subject to Privacy Act restrictions. Regarding visiting public places and events, agents should obtain prior supervisory approval, if time permits, and the date, time, and place of the visit should always be noted in the case file. For either of these new authorities, the FBI's supervisory case file review process is the primary vehicle to ensure that agents comply with the Guidelines and do not go beyond their stated authorities.

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## FBI Policies and Procedures, Training, and Supervision

Regarding policies and procedures, FBI headquarters officials told us that guidance such as that contained in the Guidelines is to be incorporated into the FBI's investigative and administrative manuals on a regular basis.<sup>3</sup> Consistent with this practice, the FBI is in the process of completing revisions to its Manual of Investigative Operations and Guidelines (MIOG) policies and procedures manuals to incorporate guidance on the implementation of Guidelines.

Training on the Guidelines is included in all new agent training provided at the FBI Academy. In addition, on-board agents received training on the Guidelines through the FBI's Office of General Counsel, in the form of direct guidance provided to each field office, various in-service training presentations, and as part of basic training provided to agents being transferred to counterterrorism from other program areas. The field office Chief Division Counsels also received Guidelines training, and they told us this training was subsequently provided to agents in their field offices during periodic legal updates. We found that about 55 percent of the field agents who completed our questionnaire in April 2003 indicated that they

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<sup>3</sup>These are the Manual of Investigative Operations and Guidelines and the Manual of Administrative Operations and Procedures.

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had received training relating to the Guidelines—but the majority of that was on-the-job training. The FBI's training program was recently re-engineered to, among other things, update the new agent and in-service training curriculum to better address the FBI's shift in resources from criminal programs to priority areas, such as counterterrorism. Training on the Guidelines continues and is included in the new curriculum framework for both new and in-service agents.

With respect to supervision, supervisory agents are responsible for monitoring agents' work and, more formally, they are to perform periodic case file reviews at least every 90 days on all cases being worked by their agents. During these case file reviews, supervisors are to monitor the progress of cases by reviewing investigative work completed accomplished, verifying compliance with any applicable policies and procedures (including the Guidelines), and assessing the validity of continuing with the case. They also review investigative work planned for the next period—including, for example, any significant data collection that will be employed—and discuss any issues associated with or approvals needed to carry out the investigative strategy. Nearly all the field agents who completed our questionnaire indicated that their supervisors performed case file reviews every 90 days—more often in some cases. As an additional oversight, FBI officials told us that field office Assistant Special Agents-in-Charge periodically check supervisory case file reviews to ensure the adequacy of the case file review process. No specific changes to the FBI's supervisory case file review process were made in response to the issuance of the revised Guidelines.

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## FBI Field Office Inspections

The FBI's Inspection Division is responsible for reviewing FBI program divisions and field offices to ensure compliance with applicable laws and regulations and the efficient and economical management of resources. The Inspection Division attempts to regularly inspect all FBI units at least once every 3 years. Among other things, inspectors review field office case files to (1) assess the adequacy of supervisors' case file reviews and (2) ensure that investigative work complies with administrative and investigative policies and procedures. According to FBI headquarters inspection officials, it is in the context of reviewing case files that inspectors determine compliance with the procedures and other guidance contained in the Guidelines.

We reviewed selected FBI inspection reports completed since October 1999—including the most recent inspections for the 14 field offices we visited and 4 other field office inspections completed after the Guidelines

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were issued. Our review confirmed that inspectors were reviewing compliance with the Guidelines and adequacy of supervisory case file reviews during their inspection. We noted the following inspection findings:

- In four inspections, a preliminary inquiry was not converted to a full investigation after expiration of the initial authorization period.
- In seven inspections, some case file reviews were not performed in a timely manner.
- In one inspection, an investigation was opened without approval by the field office Agent-in-Charge or notification to FBI headquarters.

With respect to the new investigative authorities granted under the revised Guidelines, in reviewing the four inspection reports completed after the Guidelines were issued, there were no findings related to FBI noncompliance with these new investigative authorities.

The FBI's inspections process was reengineered in late 2002, resulting in revisions to the various inspection audit guides and checklists that inspectors use to gather advance data about program operations and investigative activities and plan their work.<sup>4</sup> In reviewing these audit guides, we found two program review guides that included a reference to the Guidelines—that is, that inspectors should “verify compliance with Attorney General Guidelines relating to the initiation, renewal, or continuance of investigations or investigative techniques.” According to the FBI's Chief Inspector, it is not necessary to incorporate specific references to the revised Guidelines into the inspection audit guides, since inspectors are already verifying compliance with all Attorney General Guidelines (and other policies and procedures) by reviewing case files and supervisory case file reviews.

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<sup>4</sup>For example, there are inspection audit guides covering the investigative programs, executive management of the field office, electronic surveillance procedures, and evaluation of internal controls.

Investigations of FBI Misconduct and Abuse

Within the FBI, the Office of Professional Responsibility (OPR) is generally responsible for investigating and adjudicating allegations of misconduct by FBI employees. OPR's investigative case activity is shown in table 10, below.

Table 10: Allegations of FBI Misconduct Received and Investigated by FBI OPR—October 2000 through March 2003

	Fiscal year		
	2001	2002	2003 <sup>a</sup>
Cases opened	612	685	282
Number of offenses alleged	1,154	1,188	408
Cases closed	551	689	326
Substantiated and disciplinary action taken	347	519	168

Source: FBI OPR.

<sup>a</sup>As of March 2003.

OPR does not currently capture statistics regarding the total number of allegations received or the number of allegations that are closed without inquiry. However, OPR officials told us they were not aware of any cases involving violations of the authorities in the revised Guidelines related to terrorism investigations. Based on their standardized offense codes and the time period identified above, they identified a number of closed cases involving violations of Attorney General Guidelines, violations of individual civil rights, and violations of investigative policies and procedures. However, they told us that the only way to verify whether any of these cases specifically involved some aspect of the revised Guidelines would be to review each of the individual investigative case files. An OPR official told us that a redesign of their computer system is in progress, and additional information on allegations received and investigations opened will be captured when the redesign is complete. However, no changes are planned to allow the tracking of misconduct cases specifically related the revised Guidelines.

Within the Department of Justice, the Office of Inspector General (OIG) also has responsibility for ensuring that allegations of FBI misconduct are appropriately handled. Beginning in July 2001, all allegations against FBI employees were to be submitted initially to the OIG for review. The OIG then decides which complaints it will investigate and which it will refer back to OPR for investigation. As shown in table 11, most allegations of FBI misconduct are referred to OPR for investigation or other disposition. The OIG did not specifically track the number of allegations involving the Guidelines, but they did report that the most common complaints received

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were job performance failure, waste and misuse of government property, and other official misconduct.

**Table 11: Allegations of FBI Misconduct Received and Investigated by DOJ OIG—July 2001 through February 2003**

Disposition of allegations	Number of allegations	Percent
Referred to OIG's Investigation Division	71	5.6%
Referred to OIG's Office of Oversight and Review	14	1.1
Forwarded to FBI OPR as "management issues" <sup>a</sup>	1,061	84.3
Referred to FBI as "monitored referrals" <sup>b</sup>	41	3.3
Informational items filed for future reference <sup>c</sup>	72	5.7
<b>Total</b>	<b>1,259</b>	<b>100.0%</b>

Source: DOJ OIG.

<sup>a</sup>This category includes allegations within the FBI's jurisdiction but not against FBI employees; complaints that cite no improper act by an FBI employee; and administrative issues such as lost credentials and misuse of FBI equipment.

<sup>b</sup>Monitored referrals require FBI OPR to investigate the allegation and report their findings to the OIG.

<sup>c</sup>This category includes information that provides no viable leads to investigate, repetitive information that has either been addressed or previously filed, and information from sources in which the credibility of the source is in question.

The OIG also has responsibility under the USA Patriot Act<sup>5</sup> to receive and investigate all allegations of civil rights or civil liberties abuses raised against DOJ employees. Between October 2001 and February 2003, the OIG received 35 allegations involving FBI violations of individual civil liberties, 2 of which were reported to involve noncompliance with Attorney General Guidelines. Upon further review, however, one involved an illegal search, one involved a coerced statement, and neither involved noncompliance with the new authorities granted under the Guidelines. As part of its mission to oversee DOJ programs and operations, the OIG currently plans to conduct an evaluation of the FBI's entire process of employee discipline. Furthermore, in April 2003, the OIG began a review of the FBI's implementation of all Attorney General's Guidelines that were revised in May 2002—including the domestic investigative guidelines.

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<sup>5</sup>P.L. 107-56, 115 Stat. 272, 391 (2001).

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## Concerns about How the Guidelines May Adversely Affect Civil Liberties

When the revised Guidelines were issued, private sector groups raised concerns about what they saw as a relaxing of investigative controls over the FBI, which represented a potential threat to individual civil liberties. For example:

- Private sector officials said that the FBI is now allowed to gather information at any place or event that is open to the public—even in the absence of any indication of criminal activity. This encourages a return to the days when the FBI sent agents into churches and other organizations during the civil rights movement, in an attempt to block the movement and suppress antigovernment dissent.
- These officials also noted that liberalization of the Guidelines which allows the FBI to access and analyze data from commercial and private sector databases will result in a return to profiling of individuals and building of intelligence dossiers. The inaccuracy or misuse of such data could lead to innocent persons being suspected of crimes.

None of the private sector officials we met with could provide specific examples of the FBI abusing the new authorities granted under the Guidelines. Rather, their concerns stemmed from the notion that granting the FBI broader investigative authorities—which can be used even in the absence of any suspected criminal activity—not only ignores the lessons of past abuses, but is unlikely to result in any tangible gains in law enforcement.<sup>6</sup>

FBI headquarters officials said that the supervisory case file review process is the primary vehicle to ensure that agents comply with applicable policies and procedures—including the Guidelines. Regarding the authority to visit public places and events, FBI field office managers told us that, considering the number of legitimate leads coming in and the number of ongoing preliminary inquiries and investigations, agents are fully tasked to support existing work and do not have the time or need to visit public places or surf the Internet to generate additional leads. Based on our field visits, however, we found that some agents are proactively using the new investigative authorities granted under the revised Guidelines. As shown in table 12, as of April 2003, 64 (about 36 percent) of

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<sup>6</sup>In the mid-1970s, we reported on the FBI's domestic intelligence program and also found that, despite intensive efforts to disrupt dissident and subversive acts by domestic groups, the program showed little evidence of advance knowledge of extremist acts or violence, and overall showed few visible results.

the 176 agents who completed our questionnaire indicated they had accessed commercial information or databases, 53 (about 30 percent) conducted online Internet searches or accessed online sites, and 31 (about 18 percent) visited public places or events, prior to opening a preliminary inquiry or investigation. In addition, most of the agents who completed the questionnaire indicated prior supervisory approval was not needed to perform these activities.

**Table 12: Use of New Investigative Authorities under the Revised Guidelines by FBI Field Agents Who Completed Our Questionnaires**

<b>Investigative activity</b>	<b>Used prior to a preliminary inquiry or investigation</b>	<b>Used during a preliminary inquiry or investigation</b>	<b>Supervisory approval prior to the activity</b>	<b>No prior supervisory approval needed</b>
Accessed commercial information or databases	64	153	11	150
Accessed other public or private information or databases	50	143	24	128
Visited public places and events	31	104	48	96
Conducted general topical or subject matter research	64	128	9	148
Conducted online searches or accessed online sites or forums	53	122	22	126

Source: Analysis of FBI field agent responses to GAO questionnaire.

To help assuage public concerns about civil liberties issues, the FBI has been reaching out to communities to assure them that, despite the emphasis on counterterrorism, investigating abuses remains a high priority of the FBI. FBI field offices have been tasked to contact Muslim leaders for the purpose of establishing a dialogue and discussing procedures for alerting the FBI to civil rights abuses. For example, in one field office we visited, five meetings were held during the first 4 months of 2003—including meetings with Muslim community leaders and a panel discussion to answer questions from the public—covering topics related to homeland security, FBI employment, and community outreach. Throughout the FBI, over 500 outreach meetings occurred during the first 5 months after September 11, 2001. In addition, some FBI field offices have provided sensitivity training to field agents on the Islamic religion and culture. Finally, regarding the new investigative authority to visit public places and events, FBI headquarters officials are currently considering whether to require mandatory supervisory approval prior to allowing an agent to enter a public place or attend a public meeting.

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