



AUDIT OF THE FEDERAL BUREAU OF INVESTIGATION'S MANAGEMENT OF TERRORIST WATCHLIST NOMINATIONS

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AUDIT OF THE FEDERAL BUREAU OF INVESTIGATION'S MANAGEMENT OF TERRORIST WATCHLIST NOMINATIONS

EXECUTIVE SUMMARY¹

The Terrorist Screening Center (TSC) was created to consolidate the U.S. government's approach to terrorism screening and to develop and maintain a database of information about known or suspected terrorists, known as the Terrorist Screening Database (TSDB) or terrorist watchlist. The TSC is administered by the Federal Bureau of Investigation (FBI) with support from the National Counterterrorism Center (NCTC), the Intelligence Community, and law enforcement agencies.

On Christmas Day 2009, a Nigerian national, often referred to publicly as "the Underwear Bomber," attempted to detonate an explosive device onboard a flight from Amsterdam to Detroit.² Although the perpetrator of this failed attack was known to the U.S. government, he was not on the consolidated terrorist watchlist. As a result, the Watchlist Community took a series of actions to address immediate threats and improve the watchlist process. One objective of this OIG audit was to review the FBI's actions and evaluate the impact on the FBI's watchlisting system of this failed terrorist attack.

The OIG has performed five previous audits of watchlist-related activities and has made numerous recommendations to improve the watchlist. In addition to reviewing the impact of the December 25, 2009, failed terrorist attack, this audit also assessed the effectiveness of FBI initiatives, implemented between 2009 and 2012, that were intended to ensure the accuracy, timeliness, and completeness of the FBI's watchlisting practices, including watchlist nominations and removals.

Events Related to Terrorism Attempt on December 25, 2009

Following the failed terrorist attack on December 25, 2009, the TSC was directed to make a series of temporary modifications to the watchlist status of several groups of individuals. These modifications were directed by an interagency process that involved high-ranking government officials in the Executive Branch and the White House. The changes reflected emerging threat information and were not covered by the then-existing watchlist policy and procedures. Overall, we found that the TSC responded commendably to the attempted terrorist attack and worked diligently to overcome these policy weaknesses, as well as the associated technical and procedural problems. However, we also determined that the

¹ The full version of this report contains classified and other information that if released publicly could compromise national security interests and the FBI's and TSC's operations. To create this public version of the report, the Office of the Inspector General redacted (blacked out) these portions of the report.

² The perpetrator ultimately entered a guilty plea and currently is serving a life sentence in federal prison.

modification requests were not communicated and documented effectively. In addition, as a result of the policy and procedural issues, the TSC was unable to readily identify individuals who met the threat-based criteria, or to easily generate a listing of all of the watchlist records that were modified in response to the directions provided subsequent to the incident. As a result, the TSC relied on largely manual processes to track the watchlist modifications and related in-depth or "deep dive" reviews related to the upgrades. In July 2010, the TSC and the Watchlist Community developed new policies and procedures to cover a similar event in the future.³ Adhering to these policies and procedures should help to ensure that future threat-based watchlist modifications are communicated more effectively and coordinated more efficiently.

FBI Processing of Watchlist Nominations and Removals

In general, individuals who are subjects of ongoing FBI counterterrorism investigations are nominated for inclusion on the watchlist. FBI policy also allows for the nomination of an individual for whom the FBI does not have an open terrorism investigation, referred to as non-investigative subjects.

During our previous audits of the FBI's watchlist processes, we found that the FBI failed to nominate to the watchlist subjects of terrorism investigations, failed to remove from the watchlist subjects of closed terrorism investigations, and was not timely in processing nominations to the watchlist.⁴ In response to our reports, the FBI revised its watchlist policy, reorganized the operational unit responsible for processing watchlist nominations, implemented timeliness standards for the submission and processing of watchlist actions, and established a team to assess the FBI's performance against the new criteria. Further, the FBI implemented a new automated process for submitting and processing watchlist nominations and removals.

Watchlist Nominations

Generally, we found that the improvements implemented by the FBI as a result of our previous audits have helped to ensure that the watchlist is more complete, accurate, and current. For example, in our May 2009 audit we found that 15 percent of the subjects of FBI terrorism cases reviewed were not nominated to the watchlist. In our current review of 115 subjects of terrorism investigations opened during the first quarter of fiscal year (FY) 2011, we did not identify any subjects who were not nominated to the watchlist as required by FBI policy.

³ Members of the Watchlist Community include the Office of the Director of National Intelligence, Central Intelligence Agency, National Geospatial Intelligence Agency, National Security Agency, National Reconnaissance Office, and the Departments of Justice, Defense, State, Treasury, Homeland Security, and Energy.

⁴ The Department of Justice Office of the Inspector General has conducted five previous audits of the TSC, DOJ's watchlist nomination processes, and the FBI's watchlist practices. Additional details on these audits are provided in Appendix III.

However, we found that the FBI's December 2009 and December 2010 watchlist policies provided case agents with guidance about nominations to the watchlist that was inconsistent with the Watchlist Community's July 2010 Watchlist Guidance, and that the FBI policy unduly restricted the FBI's nominations to the watchlist. For example, the FBI's watchlist policy did not require the nomination of individuals for whom [REDACTED] were not known. However, the Watchlist Community's Guidance requires nominating agencies to share with NCTC and the TSC all terrorism-related information, including instances in which [REDACTED] is known. As a result, FBI case agents were not submitting certain nominations where [REDACTED] were not known. When we made this concern known to the FBI during the course of this audit, the FBI revised its watchlisting nomination guidelines in March 2012 to conform with the minimum identifying criteria set forth in the July 2010 Watchlisting Guidance. However, we believe the policy still provides FBI personnel with inconsistent directions that could cause terrorism information to not be available to the Watchlist Community.

Further, we found that during the course of an investigation, the case agent may obtain additional biographical information to meet the FBI's standard for nomination to the watchlist. However, an FBI official said that once the case agent obtains sufficient biographical information, the case agent should, but may forget to submit the appropriate paperwork to have the individual watchlisted. The FBI reported that its supervisors are required to conduct regular case file reviews with case agents to help ensure the subjects are appropriately watchlisted. However, despite these supervisory reviews, the subjects we identified for whom additional information was obtained during the investigation, were still not nominated to the watchlist while the case was open. In such instances, information about known or suspected terrorists would not be available to the Watchlist Community for analysis and possible watchlisting.

Watchlist Removals

We also found that subjects of closed terrorism investigations were removed from the watchlist when the case was closed. In our previous audit, we found that 8 percent of the subjects of the cases we reviewed were not removed from the watchlist when the case was closed. In our current audit, we found that the FBI removed from the watchlist subjects of cases closed in four field divisions during the first quarter of FY 2011.

Watchlist Nomination and Removal Efficiency

We also found that the FBI field divisions have improved their compliance with timeliness standards for the submission of watchlist nominations and removals to FBI headquarters. Nevertheless, we found that the FBI's time requirements for the submission of watchlist actions could be strengthened. Under the FBI's guidelines, up to 17 business days could elapse between the date a case agent receives supervisory approval to open a terrorism case and the date the subject is

nominated to the watchlist.⁵ Based on our analysis of FBI watchlist data, we believe that the timeliness guidelines for the submission of watchlist actions by FBI field divisions could be reduced.

Moreover, we found that the FBI's headquarters unit that processes watchlist actions had redundant and inefficient processes that hampered its ability to process watchlist actions in a more timely fashion. During the course of our audit, the FBI developed and implemented new policies and procedures that we believe will help it to process watchlist actions more efficiently. Following the reorganization of the TSC and the headquarters unit responsible for processing FBI watchlist actions, we recommend that the FBI further review its policies and processes to determine the most effective and efficient methods, including technological improvements, to ensure that subjects are reliably nominated to the watchlist as expeditiously as possible.

FBI Watchlisting of Individuals Not Under Investigation

During our previous audits, we identified weaknesses in the FBI's handling of watchlist records related to individuals who are not under investigation by the FBI, referred to as non-investigative subjects. The FBI issued a new policy that more clearly defined its processes for including on the watchlist such individuals for whom the FBI does not have an open investigation. In this audit, we found that the FBI used multiple processes to submit requests for watchlisting non-investigative subjects, and, the FBI was not timely in submitting watchlist nomination and removal packages for individuals not under investigation by the FBI. Most noteworthy is that during our review of a sample of non-investigative subject nominations, we identified four subjects of closed full investigations who had not been previously nominated to the watchlist. Although the case agent indicated that these subjects were eligible for inclusion on the Transportation Security Administration's (TSA) No Fly List, it took the FBI a median of 44 business days to submit the watchlist nomination package and nominate these subjects to the No Fly List.⁶ Moreover, in cases where the FBI team determined that non-investigative subjects should be removed from the watchlist, it took the FBI a median of 78 days to remove the subjects from the watchlist. Finally, we found that the FBI had not maintained adequate records to readily provide an accounting of the time it took to process non-investigative subject nominations and removals or to document processing delays.

As a result of this review, the FBI implemented policies and procedures to help to ensure that its processing of non-investigative subject watchlist nominations is more complete, consistent, accurate, and timely. We believe that these improvements are a positive step forward. However, we identified continued

⁵ The FBI also has an expedited nomination process, which is used when there is an imminent threat.

⁶ The TSA No Fly List includes names of individuals who are to be denied transport on commercial flights because they are deemed a threat to civil aviation, U.S. facilities, or U.S. vessels.

weaknesses in the database used by the FBI to submit, monitor, and track non-investigative subject nominations.

Our report contains 12 recommendations to assist the FBI in strengthening its watchlist-related operations and practices. These recommendations include requiring the TSC to better document its actions during national security events, clarifying FBI information sharing policies to ensure the FBI's internal policies are consistent with those of the Watchlist Community, and improving the efficiency of the FBI's watchlist nomination process for investigative and non-investigative subjects.

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TABLE OF CONTENTS

INTRODUCTION	1
Failed Terrorist Attack of December 25, 2009	2
Overview of the Watchlist Process	2
Overview of Internal FBI Watchlist Processes	7
Previous OIG Reviews	11
OIG Audit Approach	12
FINDINGS AND RECOMMENDATIONS	14
I. TSC ACTIONS FOLLOWING THE FAILED TERRORIST ATTACK OF DECEMBER 25, 2009	14
TSC Actions Following the Terrorist Attack	14
In-Depth Record Reviews ("Deep Dives")	23
TSC Documentation Supporting Watchlist Modification	26
TSC Managerial Continuity and Significant National Security Events	29
Review of the U.S. Watchlisting System	30
Conclusion	30
Recommendations	31
II. FBI WATCHLIST NOMINATIONS AND REMOVALS	33
Background	33
Recent FBI Watchlist Initiatives	34
FBI Watchlist Nominations	37
Watchlist Removal Policies	52
OIG Analysis of FBI Watchlist Removal Actions	54
Conclusion	61
Recommendations	63
III. NON-INVESTIGATIVE SUBJECTS	65
Overview of the Non-Investigative Subject Watchlist Process	65
OIG Review of Non-Investigative Subject Watchlist Records	68
Conclusion	77
Recommendations	78
STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS	79

STATEMENT ON INTERNAL CONTROLS	80
APPENDIX I: AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY	81
APPENDIX II: DOWNSTREAM SCREENING DATABASES	85
APPENDIX III: SUMMARY OF OFFICE OF THE INSPECTOR GENERAL AUDIT REPORTS.....	87
APPENDIX IV: WATCHLIST STATUS MODIFICATION INITIATIVES AND RELATED DEEP DIVE REVIEWS	91
APPENDIX V: FEDERAL BUREAU OF INVESTIGATION'S RESPONSE TO THE DRAFT REPORT	92
APPENDIX VI: OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT	96

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INTRODUCTION

Following the terrorist attacks on September 11, 2001, the Terrorist Screening Center (TSC) was created to consolidate the U.S. government's approach to terrorism screening and to develop and maintain a database of information about known or suspected terrorists.⁷ The consolidated watchlist is known as the Terrorist Screening Database (TSDB). The watchlist is utilized to provide information to downstream screening databases, including the No Fly List.

The TSC is a multi-agency organization administered by the Federal Bureau of Investigation (FBI) with support from the Office of the Director of National Intelligence's National Counterterrorism Center (NCTC), the Intelligence Community, and law enforcement agencies.⁸ The NCTC is the government's main repository of information regarding international terrorism and counterterrorism, and it stores the data it collects on known or suspected terrorists in a database known as the Terrorist Identities Datamart Environment (TIDE). According to the TSC Memorandum of Understanding, which governs the structure and operations of the TSC, NCTC's TIDE database does not include purely domestic terrorism information.

The watchlist process serves as a critical tool in the U.S. government's efforts to combat terrorism by helping intelligence agencies, law enforcement officials, and screening personnel identify known and suspected terrorists and by providing direction on how to respond during an encounter with these individuals.⁹ The watchlist is continually updated with new terrorist identities and new or revised biographical information gathered by U.S. intelligence and law enforcement

⁷ On September 16, 2003, the President issued Homeland Security Presidential Directive 6 (HSPD-6), which directed the Attorney General to establish an organization to consolidate the government's approach to terrorism screening and provide for the appropriate use of terrorism information in screening processes. As a result, the Attorney General created a new organization, the TSC. The TSC created the consolidated terrorist watchlist. In addition, HSPD-6 required all federal law enforcement and intelligence agencies with terrorism information to share such information for purposes related to the watchlist.

⁸ Section 1021 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) amended the National Security Act of 1947 to codify the creation of NCTC to serve as the primary organization in the U.S. government for analyzing and integrating all intelligence information possessed or acquired by the U.S. government pertaining to terrorism and counterterrorism. NCTC is a component of the Office of the Director of National Intelligence and was formerly known as the Terrorist Threat Integration Center.

⁹ An "encounter" occurs when an individual is identified as being a positive, inconclusive, or potential match to an individual who has been designated in the TSDB as a known or suspected terrorist. An encounter may be a face-to-face meeting, such as when attempting to enter the United States through a point of entry, being stopped by a local law enforcement officer for a traffic violation, or attempting to travel internationally on a commercial airline. Encounters may also be paper-based, such as when an individual has submitted an application for a visa.

agencies, including the FBI. In addition, individuals are removed from the TSDB once their inclusion is no longer considered warranted.¹⁰

Failed Terrorist Attack of December 25, 2009

On December 25, 2009, a Nigerian national, often referred to publicly as “the Underwear Bomber,” attempted to detonate an explosive device onboard a flight from Amsterdam to Detroit. The flight crew restrained the individual and the plane landed safely. After the plane landed, the perpetrator was taken into custody by the Department of Homeland Security, Customs and Border Protection (CBP) and later questioned by the FBI.¹¹ The perpetrator of this failed attack was not on the consolidated terrorist watchlist.

As a result of this incident, the White House directed what is known as the Watchlisting Community to examine the government’s watchlist processes to identify and correct any weaknesses.¹² This review revealed that the federal government had possessed all of the information necessary to place the perpetrator of the attack on the consolidated terrorist watchlist and prevent him from flying to the United States. Although the individual was in the NCTC’s Terrorist Identities Datamart Environment (TIDE), NCTC had not sent the individual’s information to the TSC for inclusion on the consolidated watchlist used by screening agencies to identify suspected or known terrorists, the TSDB. This incident highlighted vulnerabilities in the U.S. government’s watchlist policies and procedures and led to the issuance of revised watchlist guidance in July 2010.¹³

In this audit, we sought to evaluate the impact on the FBI’s watchlisting system of the failed terrorist attack on December 25, 2009. We also assessed the effectiveness of FBI initiatives, implemented between 2009 and 2012, that were intended to ensure the accuracy, timeliness, and completeness of the FBI’s watchlisting practices, including watchlist nominations and removals.

Overview of the Watchlist Process

When a law enforcement or intelligence agency identifies information on a known or suspected terrorist, the source agency nominates that person for

¹⁰ In fiscal year (FY) 2011, the TSC’s screening partners reported more than 1.2 billion queries against the terrorist screening database. According to TSC data, the identities of more than 500,000 persons were included in the TSDB as of September 2012.

¹¹ The individual ultimately pleaded guilty and is currently serving a life sentence in federal prison.

¹² Members of the Watchlist Community include the Office of the Director of National Intelligence, Central Intelligence Agency, the National Geospatial Intelligence Agency, the National Security Agency, the National Reconnaissance Office, and the Departments of Justice, Defense, State, Treasury, Homeland Security, and Energy.

¹³ In March 2013, the Watchlist Community issued revised Watchlist Guidance. Because this new policy document was issued after the scope of this review, we do not address it in this report.

inclusion in the TSDB.¹⁴ As additional relevant information is obtained that either enhances the identifying information or indicates that the individual has no nexus to terrorism, the record should be either updated or removed.

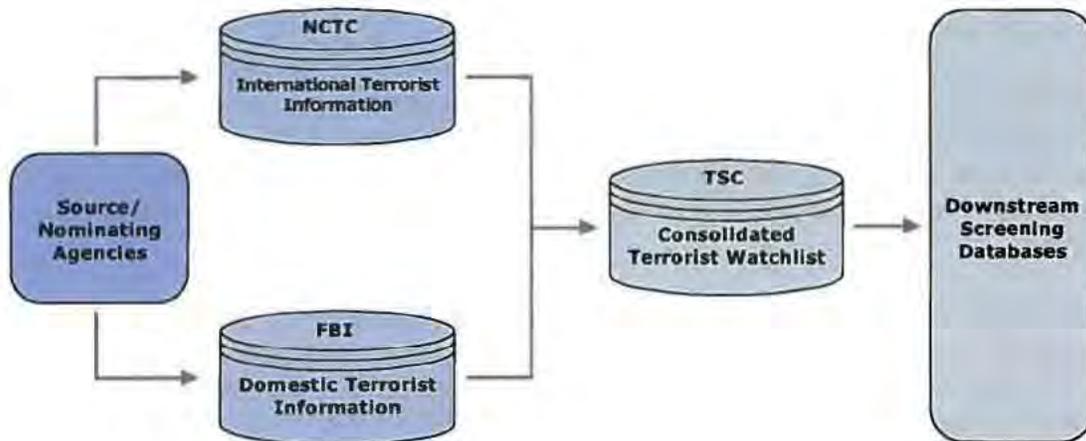
As shown in Exhibit 1-1, all nominations from source agencies to the consolidated watchlist are vetted through the FBI or NCTC. NCTC is responsible for forwarding to the TSC source agency nominations, including those from the FBI, for international terrorist identities. The FBI is responsible for submitting all domestic terrorist identity nominations directly to the TSC. Although the FBI is a source agency for both domestic and international terrorist information, it forwards relevant information through the NCTC on suspected or known international terrorists.

Analysts at NCTC (for known or suspected international terrorism nominations) and the FBI (for known or suspected domestic terrorism nominations) review the nomination information and decide whether the person is an appropriate candidate for inclusion on the consolidated watchlist. This review includes an evaluation of the information supporting the nomination, an examination of the quality and accuracy of the identifying information, and an examination of whether sufficient identifying information is available. The standard for acceptance of nominations to the TSDB is that there is a reasonable suspicion that the individual is a known or suspected terrorist. From a data perspective, the minimum biographic criteria for inclusion of a terrorist identity into the TSDB are that the record contains a last name and at least one additional piece of identifying information (for example, a first name or date of birth). NCTC and the FBI are responsible for providing the TSC with an unclassified subset of identifying information for individuals known or suspected to be or have been involved in activities related to international or domestic terrorism.¹⁵

¹⁴ The TSDB is not limited to information about known or suspected terrorists. To facilitate certain screening functions, the TSDB includes information about certain non-terrorists, [REDACTED].

¹⁵ The TSC also has an emergency nomination process, which is used when there is an imminent threat and a watchlist record needs to be created quickly. Under the "expedited" process, a requesting agency informs the TSC directly, and the TSC adds the individual to the consolidated watchlist. The requesting agency then is required to submit a nomination using the standard nomination processes. This emergency process is discussed in more depth in Finding II.

EXHIBIT 1-1
Terrorist Watchlist Dataflow



Source: OIG depiction of watchlist process

The TSC exports the unclassified terrorist identity information contained in the TSDB to other government agency data systems for use during screening activities, such as for the review of passport and visa applications by the State Department and review of international and domestic airline passengers and border crossings by the Department of Homeland Security (DHS), including U.S. Customs and Border Protection (CBP) and the Transportation Safety Administration (TSA). The TSC also provides known or suspected terrorist identity information to the FBI for use in name and fingerprint-based identification and background checks conducted by the FBI and other law enforcement entities.¹⁶

The screening personnel at U.S. points of entry and federal, state, local, territorial, and tribal law enforcement agencies use the watchlist to determine how to handle encounters with known or suspected terrorists. When a name appears to be a match against the terrorist watchlist during screening, requestors receive a return message through their respective agency's screening database informing them of the preliminary match and directing them to call the TSC.

When the TSC is notified of a potential match, TSC staff in the 24-hour operations center assist in confirming the subject's identity by searching the TSDB and supporting databases to locate any additional information that may assist in making a conclusive identification. The caller is immediately informed if the subject of the inquiry does not match the identity of an individual on the watchlist. If the subject of the inquiry is a positive or inconclusive match to a known or suspected terrorist, the FBI's Terrorist Screening Operations Unit (TSOU) is responsible for

¹⁶ A description of the downstream screening systems is contained in Appendix II.

coordinating the U.S. government's response.¹⁷ For example, TSOU may deploy agents to interview and possibly apprehend the subject.

Information gathered as a result of the encounter is analyzed for new identifying information about the known or suspected terrorist. Any new information is used to enhance existing watchlist records by means of a modification request. The Intelligence Community and law enforcement personnel use information gathered as a result of encounters with known or suspected terrorists in assessing threats and conducting investigations.

The Interagency Process

The President of the United States ultimately is responsible for making decisions regarding national security, and multiple Executive Branch agencies are involved in ensuring the security of the United States and its citizens, both domestically and abroad. To help ensure that the efforts of government agencies are coordinated and effectively implemented, the United States established the National Security Council (NSC).¹⁸ The NSC serves as the President's principal forum for considering national security and foreign policy matters. It is chaired by the President and is called into session at the President's discretion.

Immediately following the events of September 11, 2001, Congress established the Homeland Security Council (HSC).¹⁹ The HSC is the principal venue for interagency deliberations on issues that affect the security of the homeland, such as weapons of mass destruction, natural disasters, pandemic influenza, terrorism, and watchlisting.

On May 26, 2009, the NSC staff was combined with the HSC staff into the National Security Staff (NSS). The NSS supports all White House policymaking activities related to international, transnational, and homeland security matters, including the watchlisting of known or suspected terrorists. Both the NSC and HSC continue to exist by statute as independent councils of leadership to advise the President.

Each Council has a similar organizational structure, including a Principals Committee, a Deputies Committee, and Interagency Policy Committees.²⁰

¹⁷ An inconclusive match result occurs when the TSC operations center is not able to positively or negatively conclude that the encountered individual is the same individual on the watchlist. These encounters are forwarded to TSOU for further investigation.

¹⁸ Congress established a formal national security structure that was codified in the National Security Act of 1947. Presidential Policy Directive-1, entitled "Organization of the National Security Council System," was issued on February 13, 2009, to direct the organization of the National Security Council system.

¹⁹ Homeland Security Act of 2002 and Homeland Security Presidential Directive-1, dated October 29, 2001, entitled "Organization and Operation of the Homeland Security Council."

²⁰ The HSC refers to its policy committees as "Policy Coordination Committees."

The Principals Committees serve as the senior interagency forums for consideration of policy issues affecting national security. Subordinate to the Principals Committees are the Deputies Committees.²¹ As senior sub-Cabinet interagency forums, the Deputies Committees are responsible for day-to-day crisis management, directing the work of sub-committees, and ensuring that issues brought before the Principals Committees or the NSC or HSC have been properly analyzed and prepared for deliberations.

Interagency Policy Committees are composed of substantive experts and senior officials from the departments and agencies represented on the Deputies Committees. These policy committees are responsible for managing the development and implementation of national security policies by multiple agencies of the U.S. government and may contain working groups, or sub-Interagency Policy Committees, to help facilitate discussions regarding specific issues.

Terrorist Watchlist Guidance

To help formalize the U.S. government's watchlisting policies and procedures, the TSC first issued a formal, comprehensive watchlist protocol (Protocol) in July 2007.²² The Protocol provided the Watchlist Community with specific guidance regarding nominations to the watchlist, including the amount of biographic and derogatory information needed for nominations to the watchlist. The TSC updated and reissued the Protocol in June 2008 and, again, in February 2009.

Following the failed terrorist attack on December 25, 2009, the TSC issued new watchlist guidance to address weaknesses identified during the failed attack and help standardize the watchlist process.²³ For example, the new watchlist guidance provided additional clarification and explanation regarding specific activities, [REDACTED] that a nominating agency should consider in determining whether there is a reasonable suspicion that a person is a known or suspected terrorist. In addition, the watchlist guidance now allows for the inclusion on the watchlist of individuals [REDACTED]

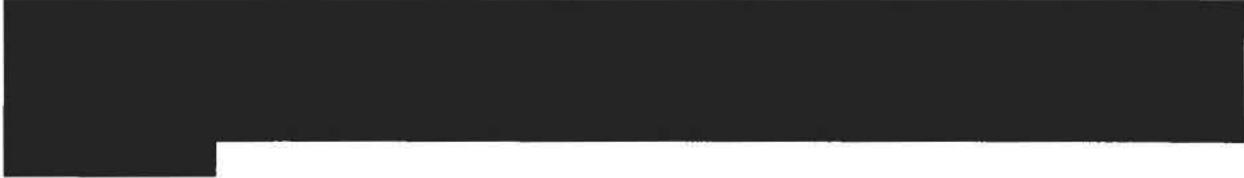
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²¹ The Deputies Committee is composed of the deputy or relevant under secretaries to the Cabinet secretaries.

²² *Protocol Regarding Terrorist Nominations*, July 2007.

²³ Terrorist Screening Center, *Watchlist Guidance*, July 2010.

²⁴ [REDACTED]



The new guidance initially was approved in May 2010, and issued to the Watchlist Community in July 2010 after a multi-agency classification review and revision process.

Overview of Internal FBI Watchlist Processes

According to the Attorney General Guidelines for Domestic FBI Operations, which became effective on December 16, 2008, the FBI is permitted to use different types of activities to investigate potential violations of federal law and threats to national security, including threat assessments, preliminary investigations, and full investigations. Investigative activity begins at the appropriate level based upon the information known at the time.

- Assessments are the lowest level of FBI investigative activity and do not require a particular factual predication. In short, an Assessment may be conducted when there is reason to collect information or facts to determine whether a criminal or national security threat exists.
- Preliminary investigations are authorized when there exists any allegation or information indicative of possible criminal activity or threats to the national security.
- Full investigations are authorized when there are specific and articulable facts giving reason to believe that a criminal activity or a threat to national security may exist.²⁵

To be nominated to the watchlist, subjects of FBI terrorism investigation must meet the "reasonable suspicion" standard. To meet this standard, the FBI must have "articulable" intelligence or information which, based on the totality of the facts, and taken together with rational inferences from those facts, reasonably warrants a determination that the subject is known or is suspected to be (or has been) knowingly engaged in conduct constituting, in preparation for, in aid of, or related to, terrorism or terrorist activities.

According to the TSC Chief Counsel, subjects of FBI preliminary investigations may not necessarily meet the reasonable suspicion threshold required for watchlisting. However, she indicated that subjects of full terrorism investigations will always meet the reasonable suspicion standard for watchlisting because of the criteria for expanding a preliminary to a full investigation.

²⁵ This description is not intended to be a comprehensive discussion of the myriad policies criteria pertaining to authorized FBI investigative activity. This is intended to provide a broad framework for the different levels of investigative activity and to provide context for the FBI's watchlist nomination requirements.

FBI policy requires that subjects of preliminary or full domestic and international terrorism investigations be forwarded to FBI headquarters for potential watchlisting.²⁶ Subjects of assessments are not to be submitted for watchlisting.

Under certain circumstances, FBI policy also allows for the nomination of known or suspected terrorists for whom the FBI does not have an open terrorism investigation. For example, foreign governments occasionally provide the FBI with terrorism information about an individual, who may be nominated to the watchlist if the FBI determines that they present a threat to national security. Generally, if the individual is located abroad and the FBI believes the individual meets the criteria for watchlisting, the FBI's nomination follows the FBI's procedures for nominating a non-investigative subject. We discuss the FBI's policy and procedures for non-investigative subjects in Finding III of this report.

Watchlist Nomination Process

When an FBI field division opens a terrorism investigation, the field division must notify FBI headquarters within 10 business days of the initiation of the investigation. One of the FBI headquarters' units that must be notified is the FBI's Terrorist Review and Examination Unit (TREX). TREX is the FBI headquarters unit that serves as the processing center for FBI watchlist nominations resulting from open FBI terrorism investigations. If sufficient identifying information on the subject exists to support a watchlist nomination, the field division is required by FBI policy to nominate the subject for entry into the TSDB. Generally, a [REDACTED] are required for FBI nominations to the consolidated watchlist.

As shown in Exhibit 1-2, the field division is required to submit the nomination to TREX. In order for TREX to process an initial watchlist nomination, the assigned case agent must electronically submit copies of the opening electronic communication document and a watchlist nomination form.²⁷ Once the field division submits the watchlist nomination, TREX is responsible for reviewing and approving nominations for both international and domestic terrorist nominations. Upon receiving the complete nomination package, a TREX Technical Information Specialist (TIS) reviews the nomination form, the opening electronic communication, and additional documentation to verify that justification for the nomination exists, that the information submitted is accurate and complete, and that the criteria are met for inclusion of the subject in downstream databases. If

²⁶ Prior to December 2009, the FBI's policy stated that known or suspected domestic terrorism subjects of preliminary investigations could be nominated to the watchlist at the discretion of the responsible FBI Field Division. On December 7, 2009, the FBI revised its policy to require the nomination of subjects of domestic terrorism preliminary investigations who met the criteria for nomination to the TSDB. FBI policy permits the exclusion from the watchlist of subjects of full domestic terrorism investigations that focus on groups or organizations that are involved in national security threats to the public.

²⁷ The same form is used for initial nominations to the watchlist, modifications of watchlist records, and watchlist record removals. Throughout this report, we refer to this form in the context of its intended capacity as the nomination, modification, or removal form.

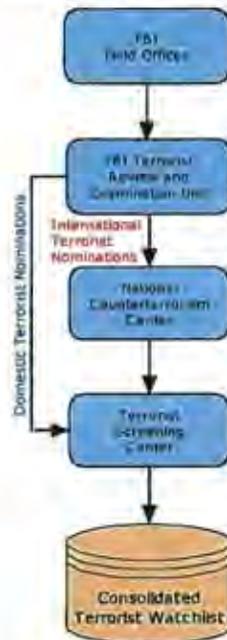
there is insufficient information, TREX follows up, including contacting the nominating agent or field division to request additional information.

Once TREX has reviewed and approved a watchlist action, it sends the actions for known or suspected *international* terrorists to the NCTC branch staffed by FBI personnel. The nomination process for known or suspected *domestic* terrorists differs in that TREX submits these nominations directly to the TSC. The NCTC is not involved in the process because its TIDE database is prohibited from containing purely domestic terrorism information. FBI policy requires that TREX process watchlist nominations within 5 business days of receipt of a complete nomination package from the field division.

The FBI analysts assigned to the NCTC enter the subject's information into NCTC's TIDE database. An NCTC supervisor conducts an additional quality assurance review to confirm the analyst's entry of data is complete and accurate by comparing the nomination to the supporting paperwork before releasing the records for export to the TSC. According to NCTC management, NCTC's standard is to process these nominations within 24 hours.

The TSC then performs one final quality review of the new records before importing them into the TSDB. The TSC exports the watchlist information to the various screening databases used by the U.S. government and some of its allies. The TSC's standard is to perform this check and complete the processing of the nominations within 24 hours.

EXHIBIT 1-2
FBI Watchlist Nomination Process
for FBI Terrorism Investigation Subjects



Source: OIG depiction of the FBI watchlist process

Similarly, when the FBI closes a terrorism investigation, FBI policy generally requires that the subject of the closed investigation be removed from the consolidated terrorist watchlist. However, in limited circumstances the FBI may leave a subject on the watchlist after the case has closed. These watchlisted individuals are referred to as non-investigative subjects. For example,

[REDACTED]. However, the FBI may believe that the individual still poses a threat to national security and warrants continued watchlisting.

Watchlist Removal Process

The removal process mirrors the nomination process. The FBI case agent is required to prepare a removal form that is electronically submitted to TREX. TREX reviews and approves the removal form and forwards international terrorist record removals to NCTC for entry into the TIDE database, which in turn exports the removal to the TSC. Domestic terrorist record removals are sent directly to the TSC. The TSC imports the removal information into the consolidated terrorist

watchlist, thus removing the record from the watchlist and the associated downstream screening databases that are populated from it.²⁸

Previous OIG Reviews

Since the creation of the TSC, the OIG has conducted several watchlist-related audits, including three audits of the TSC and one each of DOJ and FBI watchlist processes.²⁹ In our two most recent audits, we examined the internal watchlist processes for DOJ and the FBI.³⁰ In these two audits, we found that DOJ and the FBI: (1) failed to nominate to the watchlist subjects of terrorism investigations, (2) failed to remove from the watchlist subjects of closed terrorism investigations, (3) completed nominations to the watchlist in an untimely manner, and (4) used non-standard processes to nominate individuals who were not the subject of an FBI investigation or "non-investigative subjects."

As a result, we recommended to the FBI that it evaluate its overall nomination process, determine the total amount of time that is needed and can be afforded to the process, and determine how much time should be allocated to each phase of the process. In addition, we recommended that the FBI reexamine its watchlisting policies and practices during the case closure and watchlist removal process to ensure that they are clear and appropriate. We also recommended that the FBI evaluate its watchlist policy and procedures for non-investigative subjects.

In this audit, we examine several corrective actions that were implemented by the FBI in response to these two most recent audits. The results of our analysis are contained in Finding II and Finding III of this report.

²⁸



²⁹ See Appendix III for a summary of these reports, including our findings and recommendations.

³⁰ U.S. Department of Justice Office of the Inspector General, *DOJ Terrorist Watchlist Nomination Processes*, Audit Report 08-16 (March 2008) and *FBI's Terrorist Watchlist Nomination Practices*, Audit Report 09-25 (May 2009).

OIG Audit Approach

The preliminary objectives of this audit were to: (1) evaluate the impact on the FBI's watchlisting system of the failed terrorist attack on December 25, 2009, and (2) assess the effectiveness of FBI initiatives, implemented between 2009 and 2012, that were intended to ensure the accuracy, timeliness, and completeness of the FBI's watchlisting practices, including watchlist nominations and removals.

To accomplish these objectives, we conducted over 80 interviews of employees and officials at FBI headquarters and FBI field divisions as well as NCTC and TSC personnel who are involved in the processing of nominations to the consolidated terrorist watchlist. Findings I through III provide the results of our audit.

In Finding I, we chronicle the TSC's actions taken following the failed terrorist attack on December 25, 2009. This includes an in-depth discussion of the TSC's actions taken regarding temporary modifications to the watchlist status for several groups of individuals. In this finding, we also assess policy and procedural weaknesses that occurred while the TSC effected the modifications.

Finding II focuses on our assessment of the effectiveness of the initiatives implemented by the FBI in response to our prior audits to ensure the accuracy, timeliness, and completeness of the FBI's watchlisting practices, including watchlist nominations and removals. This included reviewing policies and processes concerning FBI nominations to and removals from the terrorist watchlist and performing tests of watchlist nomination and removal data submitted by four FBI field divisions: Chicago, Illinois; Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota.³¹ Further, we reviewed the FBI's controls over nominations to the watchlist that are submitted using the "expedited" nomination process, without initially going through the NCTC.

In Finding III, we examined the FBI's processes for and internal controls over watchlist records for non-investigative subjects, including changes the FBI made in this area following our previous audits. This included a review of the FBI's processing of a judgmental sample of 70 requests to nominate to or retain non-investigative subjects on the watchlist. For each sampled case, we analyzed documentation at TREX, the FBI's International and Domestic Terrorism Units, and the TSC to determine whether the nomination was submitted and processed in accordance with FBI policy, whether the subject was appropriately nominated to or retained on the watchlist and, when appropriate, whether the subject was removed from the watchlist in a timely manner.³²

³¹ To compare the FBI's processing of watchlist actions, we selected three of these offices because they were included in our testing during our prior audit – Los Angeles, Miami, and Minneapolis. Appendix I contains an expanded discussion of the audit's scope and methodology.

³² The FBI's International and Domestic Terrorism Units are the FBI headquarters units that are responsible for providing operational support and coordination for FBI counterterrorism investigations.

Appendix I contains further description of our audit objectives, scope, and methodology.

FINDINGS AND RECOMMENDATIONS

I. TSC ACTIONS FOLLOWING THE FAILED TERRORIST ATTACK OF DECEMBER 25, 2009

In the immediate aftermath of the failed terrorist attack on December 25, 2009, the TSC was directed through an interagency process to make a series of temporary modifications to the watchlist status for several groups of individuals. These changes reflected concern over emerging threat information and were not covered by the then-existing watchlist protocol and procedures. Despite these shortcomings in the protocol and other technical and procedural issues it encountered, we found that, overall, the TSC responded commendably to the attempted terrorist attack. However, we determined that because of the policy, technical, and procedural issues, the TSC was unable to readily identify individuals who met the threat-based criteria, or to easily generate a listing of all of the records modified in response to the directions received following the December 25, 2009, incident. As a result, the TSC relied on largely manual processes to track the watchlist modifications and associated in-depth ("deep dive") reviews of affected watchlist records. The TSC and the Watchlist Community have developed new policy and procedures to respond to a similar event in the future. Following these procedures should help to ensure that future threat-based watchlist modifications are communicated more effectively and coordinated more efficiently. We recommend that the TSC implement procedures for comprehensively documenting its watchlist-related actions during crisis or other situations calling for expedited actions. In addition, the TSC should continue to improve the TSDB to allow the TSC to more efficiently identify individuals who meet threat-based criteria and to track the resulting modifications of watchlist records.

TSC Actions Following the Terrorist Attack

On December 25, 2009, at approximately 12:25 p.m., a Nigerian national attempted to detonate an explosive device onboard a flight from Amsterdam to Detroit. According to TSC documentation, TSC's operations center was notified of the attempted terrorist attack at 12:46 p.m., via an e-mail from the CBP's National Targeting Center.³³ The TSC operations center immediately notified

³³ The National Targeting Center (NTC) is part of DHS. It provides around-the-clock tactical targeting and analytical research in support of the anti-terrorism efforts of DHS's Customs and Border Protection.

the TSC Director.³⁴ The TSC Director subsequently notified FBI executive management.

According to the TSC Director, numerous meetings and telephone calls were held on December 25, 2009, among counterterrorism stakeholders throughout the Executive Branch and the Administration. During one of these meetings, the TSC was directed to modify the watchlist status of certain individuals to address potential threats based on emerging information.

Although the TSC Director did not attend the meeting noted above, the TSC Director said that he had discussed the proposed changes with FBI executive management who attended the meeting. At approximately 6:50 p.m. on December 25, 2009, NCTC called the TSC to convey the modification request. The request entailed modifications to watchlist statuses that were not covered by the then-current watchlist protocol.³⁵ The modifications initially were intended to be in effect [REDACTED].

The watchlist status modifications, which were made between December 25, 2009, and February 1, 2010, related to: individuals with a nexus to three specific countries who also met certain other criteria, individuals with [REDACTED] who were in TIDE but not watchlisted in the TSDB as of December 25, 2009, all detainees from Guantanamo Bay, and individuals affiliated with two specific countries. These are discussed in the sections below.

Target Country Upgrades - December 25, 2009

On December 25, 2009, the TSC reported that NCTC requested that the TSC upgrade to the TSA Selectee List watchlisted [REDACTED].³⁶ In addition to the individuals watchlisted at the time that met these threat-based criteria, NCTC requested that the TSC upgrade to the TSA Selectee List persons that met the threat-based criteria and who had *not been watchlisted* (in the TSDB) prior to December 25, 2009, but who were included in NCTC's TIDE.³⁷

³⁴ The TSC operations center notified other TSC managers about the incident at approximately 3 p.m.

³⁵ Protocol Regarding Terrorist Nominations, February 2009.

³⁶ These individuals generally did not meet the existing criteria for placement on the TSA Selectee or No Fly Lists. The TSA Selectee List requires that individuals be subject to enhanced screening before being allowed to fly on a commercial airline. As noted previously, individuals on the No Fly List are not permitted to board a commercial flight.

³⁷ According to the TSC, these individuals had not been previously uploaded from TIDE to the TSDB because they did not meet the minimum biographic or derogatory information criteria for inclusion in the consolidated watchlist.

The TSC identified [REDACTED] identities that were in the TSDB at that time and met the threat-based criteria.³⁸ According to TSC documents, the TSC forwarded these records in a spreadsheet by 11 p.m. on December 25, 2009, to NTC and the Transportation Security Administration (TSA) Office of Intelligence for processing and dissemination to the airlines.³⁹ TSA reported that the records would be made available to the airlines [REDACTED].

Target Country Upgrades – December 26 through December 31, 2009

The next day, December 26, 2009, the TSC discovered that it failed to include in the original spreadsheet sent to TSA records for watchlisted individuals with a nexus to [REDACTED]

[REDACTED].⁴⁰ As a result, on December 26, the TSC generated a more complete listing of TSDB records fitting the declared criteria, and the TSC identified approximately [REDACTED] responsive watchlist records.⁴¹ That same day, the TSC provided the listing of watchlist records to the TSA's Office of Intelligence, as well as the Secure Flight program.⁴² According to the TSC, Secure Flight was able to process the records. However, TSA's Office of Intelligence was unable to process such a large volume of records and requested a smaller list of watchlist

³⁸ For both of the upgrade populations (the TSDB watchlisted individuals and those individuals included in TIDE but not TSDB), [REDACTED]. According to the TSC, the range was broadened to help ensure that individuals posing a potential terrorist threat were nominated to the watchlist and upgraded to the Selectee List. Because the upgrade of individuals included in TIDE but not the TSDB was not completed until a later time, that action is discussed in the following section.

³⁹ The TSC's customary practice for such watchlist modifications would be to modify the individual watchlist record within the TSDB to reflect the upgrade to the Selectee List. The modified records would then be exported to the TSA for vetting against passenger data. [REDACTED]

[REDACTED]. On December 31, 2009, the TSC modified the watchlist status in the TSDB for records that contained sufficient biographical information.

⁴⁰ [REDACTED]

⁴¹ The reported figure represents the number of *watchlist records* that met the stated criteria. This does not equate to the number of known or suspected terrorists as a single person may have multiple records to account for the use of aliases, alternate identities, and multiple identifying documents. As such, the number of watchlist records generally will be larger than the number of suspected or known terrorists.

⁴² Secure Flight is the system used by the TSA to identify individuals that may pose a threat to aviation. Prior to the implementation of Secure Flight, individual airlines were responsible for pre-flight watchlist screening for domestic flights, and CBP was responsible for pre-flight watchlist screening for international flights. In November 2010, TSA Secure Flight assumed full responsibility for pre-flight watchlist screening of passengers on domestic and international flights into, out of, and within the United States. Secure Flight now collects passenger information submitted by the airlines for domestic and international flights and vets it against the watchlist. Secure Flight results are then transmitted back to the airline. This process serves to prevent individuals on the No Fly List from boarding an aircraft and to identify individuals on the Selectee List for enhanced screening.

records. TSC analysts reviewed the list of [REDACTED] records and selected the first watchlist record for each identity. On December 28, the TSC provided the TSA's Office of Intelligence with a spreadsheet containing [REDACTED] watchlist identities.

On December 29, 2009, the TSC again learned that the spreadsheet of watchlisted individuals it had provided to the TSA's Office of Intelligence was incomplete, as it did not contain records for [REDACTED]. The TSC retransmitted a complete listing of [REDACTED] watchlist identities to the TSA's Office of Intelligence.

For individuals meeting all threat-based criteria who were in TIDE but not in the TSDB, on December 27, 2009, the TSC received from NCTC a data file containing the nominations to the watchlist for [REDACTED] and [REDACTED] identities. On December 31, 2009, NCTC provided TSC with the data file of nominations for inclusion on the Selectee List of [REDACTED] identities who met all threat-based criteria but had not been watchlisted prior to December 25, 2009. The TSC processed both of the data files of nominations from NCTC using TSC normal business processes and exported the nominations to DHS's TECS and TSA's Office of Intelligence and Secure Flight on the day received.⁴³

On December 31, 2009, NCTC advised the TSC that DHS had requested that [REDACTED] be added to the list of target threat countries. According to the TSC Director, the TSC processed nominations of [REDACTED] who were in TIDE but who had not been watchlisted prior to December 25.

Target Country Upgrades – January 2010

According to a TSC official, at the beginning of January 2010, there were some questions at the TSC regarding the targeted upgrading of watchlist records. In addition, the TSC Director and TSC Chief Counsel said that on January 4, 2010, they became concerned about the lack of written direction regarding the modification of the watchlist status beyond the initially agreed upon timeframe of [REDACTED]. Because the requested upgrades were not covered under the existing watchlist protocol and because the TSC had not received any formal, written guidance, the TSC Director and Chief Counsel informed the FBI General Counsel of the directives and the lack of supporting documentation.

The TSC Director said that the FBI General Counsel advised that the FBI believed that the directions to modify the watchlist status of the certain individuals

⁴³ The TECS System (which is no longer an acronym) serves as the principal information system supporting border management and the law enforcement mission of DHS CBP and other federal law enforcement agencies.

were permissible under Homeland Security Presidential Directive-6 (HSPD-6).⁴⁴ The FBI General Counsel also advised that the modifications should be continued despite the TSC not having the direction in writing. As a result, the TSC Director began to confirm in writing the directions provided to the TSC and the actions taken by the TSC.⁴⁵

In response, the TSC was asked to wait to remove the individuals until the interagency group met on January 15, 2010, and discussed the merits of either retaining or removing the individuals from the watchlist. The TSC was also told that the TSC or NCTC could remove or modify the status of individuals on a case-by-case basis.⁴⁶

On January 6, 2010, the TSC received an e-mail that indicated there appeared to be some confusion regarding the scope of the direction to watchlist certain groups of individuals who did not meet the watchlist criteria, had not been watchlisted prior to December 25, 2009, but were known to the U.S. Intelligence Community and were included in TIDE. Specifically, the e-mail said that, through the interagency process, NCTC was asked to review certain groups of individuals in TIDE to determine if they should be temporarily watchlisted based on information about emerging threats. The e-mail indicated that the final decision on individual upgrades was deferred to NCTC professionals who "do this for a living." The e-mail continued on to discuss a separate and distinct DHS request to receive a full listing of all individuals in TIDE regardless of their watchlist status.

We discussed this e-mail with TSC officials because it could be read to say that the TSC had not been specifically requested to upgrade the watchlist records but only had requested that NCTC review the categories of individuals and determine if the watchlist statuses should be modified. The TSC Director told us that he was confident that he fully and clearly understood the interagency process requests and that the TSC had carried out the modifications exactly as they had been requested. The TSC Director stated that he believed that the confusion

⁴⁴ On September 16, 2003, the President signed Homeland Security Presidential Directive-6 (HSPD-6), requiring the establishment of an organization to "consolidate the Government's approach to terrorism screening and provide for the appropriate and lawful use of Terrorist Information in screening processes." Subsequently, the Attorney General created a new organization, the TSC, to consolidate terrorist watch lists and provide 24-hour, 7-day a week operational support for federal, state, local, territorial, tribal, and foreign government as well as private sector screening across the country and around the world.

⁴⁵ In the TSC Director's initial e-mail dated January 6, 2010, he confirmed the verbal directions that the records remain at the current watchlist status for [REDACTED].

⁴⁶ On January 15, 2010, an interagency committee requested these individuals be re-watchlisted. According to the TSC, between January 5 and January 15, 2010, [REDACTED] of the original [REDACTED] were dewatchlisted because there was insufficient derogatory information to support watchlisting. Either due to additional information being added to the records or subsequent direction from the interagency process, [REDACTED] dewatchlisted individuals were renominated to the watchlist through the TSC's normal business process between February 4 and February 15, 2011. A total of [REDACTED] identities do not appear to have been renominated.

referred to in the e-mail stemmed from the similar but separate tasks being requested. We believe that because the watchlist upgrade requests were not in writing, the situation was ripe for misinterpretation or confusion and increased the risk that the modifications would not be implemented as intended and could have caused delays in carrying out the directions. At our audit close-out meeting and in subsequent communications, the TSC stressed that as a result of this increased risk, officials took the initiative to document the direction they received through official correspondence.

██████████ Upgrades

As a result of an interagency meeting on January 11, 2010, NCTC and the TSC were directed to temporarily include on the TSA No Fly List all individuals in TIDE (including those already in the TSDB and those existing in TIDE but not watchlisted) with ██████████. On January 16, 2010, the TSC identified ██████████ persons with ██████████ who were already watchlisted and included these individuals on the No Fly List. In addition, NCTC identified ██████████ persons with ██████████ who were not previously watchlisted but had been included in TIDE.

According to the TSC, many of the persons watchlisted and upgraded to the No Fly List were individuals without any information indicating a personal involvement in terrorism, ██████████. ⁴⁷ As such, many of these ██████████ did not meet either the current substantive criteria for placement on the No Fly List or the minimum substantive derogatory information requirement for inclusion in the TSDB.

When the NCTC provided to the TSC the records for ██████████, the TSDB's business rules automatically excluded the records from inclusion in the TSDB.⁴⁸ According to NCTC, to bypass the TSDB business rules and include these individuals in the TSDB, NCTC proposed assigning an unused and obsolete code to the records. However, the TSC Director said that the proposed code denoted that the subject had engaged in unlawful acts. As a result, if the individual were encountered by a CBP agent at the border, the agent could erroneously believe that the person had engaged in criminal activity.

The TSC explored alternative ways to upgrade the ██████████ in TIDE to the No Fly List. To meet the directive to modify the watchlist records of ██████████ without erroneously labeling individuals as having engaged in criminal conduct, the TSC provided TSA with a spreadsheet containing the persons with ██████████.

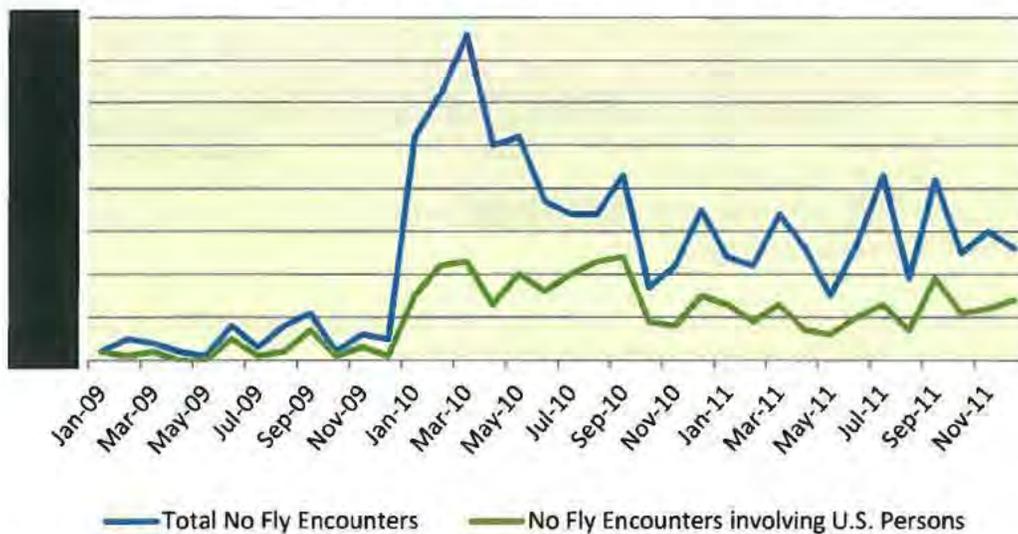
⁴⁷ ██████████

⁴⁸ A business rule is an automated information technology function in which the record is analyzed for specific deficiencies and compliance with criteria.

██████████ who had not been previously watchlisted.⁴⁹ In this manner, these individuals were added to the No Fly List, without being added to the TSDB.

As shown in Exhibit 2-1, as a result of the inclusion on the No Fly List of individuals with ██████████, the TSC experienced a surge in the number of encounters with individuals on the No Fly List. As a result, the TSC was required to expend more resources responding to these encounters.

EXHIBIT 2-1
Encounters With Persons on the No Fly List
(January 2009 through December 2011)



Source: Terrorist Screening Center

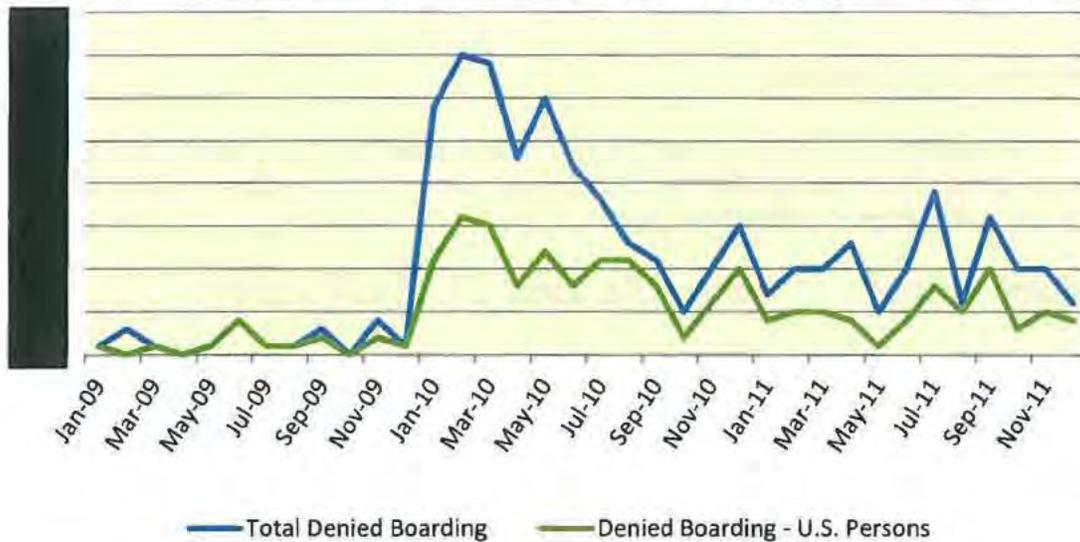
As part of the interagency process, the TSC Director reported that the TSC had a significant number of encounters ██████████ who experienced difficulty traveling because of their new No Fly status. Moreover, for some of the individuals encountered, the U.S. government possessed minimal information to support watchlisting. The TSC Director said that with each No Fly encounter, he personally reviewed the available information and, when appropriate, approved downgrading the individual from the No Fly to the Selectee List.

As shown in Exhibit 2-2, U.S. citizens and legal permanent residents who were on the No Fly List also experienced problems with airline travel. U.S. Persons generally have a right to return to the United States and placement on the No Fly

⁴⁹ The TSC would normally modify the individual watchlist record within the TSDB to reflect the nomination to the No Fly List. The modified records would then be exported to the TSA for vetting against passenger data.

List does not bar an individual from entering the United States.⁵⁰ The TSC reported that from January 1, 2010, to April 20, 2010, [REDACTED] who were on the No Fly List were denied boarding airline flights bound for the United States.⁵¹

EXHIBIT 2-2
Persons on the No Fly List
Who Were Denied Boarding an Aircraft
(October 2009 through December 2011)⁵²



Source: Terrorist Screening Center

As a result, on January 19, 2010, the Terrorist Screening Center Policy Board Working Group met to discuss the No Fly upgrades of [REDACTED]

⁵⁰ The U.S. government has the authority to bar a person on the No Fly List from boarding an aircraft bound for the United States. To help facilitate the return of U.S. Persons denied boarding overseas, the TSC developed an assessment process to determine whether the individual was still appropriately watchlisted [REDACTED]

[REDACTED]. Non-U.S. Persons and those U.S. Persons deemed ineligible for air travel must find alternate methods for traveling, such as boats and automobiles.

⁵¹ [REDACTED]

⁵² The TSC provided the OIG with this data on several occasions. This is the information it now asserts is correct.

[REDACTED].⁵³ The Working Group met again on January 21, 2010, and reached a consensus regarding more specific criteria to guide the decision to either retain individuals on the No Fly List or downgrade individuals to the Selectee List. Based on the recommendations from the TSC Policy Board, on January 22, 2010, the original directive for [REDACTED] was revised and the TSC was provided with more specific guidance as to whether to retain individuals on the No Fly List or downgrade them to the Selectee List. The TSC reported that on January 24, 2010, it completed its initial review of the watchlist records for the [REDACTED] and modified each affected person's watchlist status in accordance with the new guidance.

Guantanamo Bay Detainees

In a January 15, 2010, letter, the TSC Director advised that the TSC had placed all detainees held at the Naval Station, Guantanamo Bay, Cuba, on the No Fly List, as had been required by law.⁵⁴

Individuals Affiliated with Two Specific Countries - January 2010

Around January 11, 2010, as part of the interagency process, the TSC was directed to review all existing records in TIDE that had a [REDACTED] and upgrade the individual to the No Fly List.⁵⁵ In an e-mail dated January 14, 2010, the TSC Director requested written guidance regarding the scope of the watchlist modification directions. The TSC Director expressed his concern that the TSC was receiving a lot of direction and that the message might be getting confused and inaccurate. On January 22, 2010, the TSC received an e-mail that this particular direction would be discussed during an interagency committee meeting scheduled to occur that day. During that meeting the TSC was provided with more specific guidance on issues raised by the TSC.

The TSC reported that it forwarded all [REDACTED] persons in TIDE with [REDACTED] to the TSDB, upgraded existing known or suspected [REDACTED] terrorists who were already in the TSDB to the No Fly List, and placed [REDACTED] of known or suspected [REDACTED] terrorists or those with [REDACTED] on the Selectee List. According to the TSC,

⁵³ Generally, the purpose of the TSC Policy Board is to formulate recommendations to the interagency working group concerning government-wide policy guidance for the nomination and watchlisting of, and the management of encounters with known or suspected terrorists. The Policy Board is chaired by the Director of the TSC and composed of senior executive representatives from the Office of the Director of National Intelligence, the Central Intelligence Agency, NCTC, FBI, TSC, and Departments of State, Treasury, Defense, Justice, and Homeland Security. Following the failed terrorist attack on December 25, 2009, the TSC Policy Board made recommendations to the interagency working group on watchlisting issues.

⁵⁴ P.L. 111-83 (October 28, 2009), Section 553, codified at 49 U.S.C. 44903(j)(2)(C)(v).

⁵⁵ [REDACTED]

the TSC and NCTC identified approximately [REDACTED] individuals with [REDACTED], respectively, who met the stated minimum biographical criteria. An additional [REDACTED] persons had [REDACTED] for a combined total of approximately [REDACTED].

On February 1, 2010, approximately [REDACTED] of these persons were placed on the No Fly List and [REDACTED] persons were placed on the Selectee List. However, for an additional [REDACTED] persons there was insufficient biographic information; for example, [REDACTED]. As a result, these persons could not be upgraded to the Selectee or No Fly Lists.

In-Depth Record Reviews (“Deep Dives”)

According to the TSC Director, the Intelligence and Watchlist Communities agreed that, following the initial watchlist additions and modifications, officials would need to thoroughly review each resulting record change to determine the individual’s appropriate watchlist status. As a result, the FBI and other Intelligence Community members were directed to review the information in their possession about each individual, determine the appropriate individualized watchlist status, and provide their recommendations to the TSC. The TSC was directed to coordinate the review and effect the necessary changes. According to TSC officials, they compiled the list of persons whose watchlist status was altered as a result of each of the various initiatives following December 25, 2009.⁵⁶ They then provided the lists to the reviewers for action.

As shown in Exhibit 2-3, the TSC tracked and monitored the status of what were called “deep dive reviews” of individuals whose watchlist status was altered as a result of the events on December 25, 2009. The reviews began when the TSC provided the lists of affected persons to the reviewers in June 2010. These reviews were not completed until December 2011 – nearly 2 years after the watchlist statuses were altered.⁵⁷

In February 2010, the TSC provided to the deep-dive reviewers the lists of [REDACTED] whose watchlist status was altered in early January 2010. The TSC reported that these deep dive reviews were completed by June 25, 2010, and the TSC made all necessary watchlist status modifications or removals according to each individual’s eligibility. For the individuals [REDACTED] whose watchlist status was altered in February 2010, the TSC provided to the deep-dive reviewers the lists of affected individuals within 30 days of the watchlist

⁵⁶ We identified inconsistencies within TSC documentation regarding the number of individuals whose watchlist status was modified. We discuss this further in the following section entitled “TSC Documentation Supporting Watchlist Modification.”

⁵⁷ According to the TSC, individuals’ watchlist statuses generally were not modified until the deep dive reviews were completed. If an individual was encountered while this was pending the TSC reviewed the nature of the derogatory information and made adjustments in watchlist status, when necessary. Most of the watchlisted subjects were not encountered while their watchlist status was being reviewed.

upgrades. However, the agencies did not complete the deep dive reviews until June 2011.

**EXHIBIT 2-3
Watchlist Status Modification Initiatives and
Related Deep Dive Reviews⁵⁸**

Initiative Description	Total Persons	Date Review Initiated	Deep Dive Completion Date
UPGRADE TO SELECTEE: Previously watchlisted [REDACTED] [REDACTED]	[REDACTED]	6/18/2010	12/07/2011
UPGRADE TO SELECTEE: Not previously watchlisted [REDACTED] [REDACTED]	[REDACTED]	6/18/2010	12/07/2011
UPGRADE TO NO FLY/SELECTEE: [REDACTED]	[REDACTED]	2/8/2010	06/25/2010
UPGRADE: (1) Previously watchlisted [REDACTED] [REDACTED] individuals upgraded to No Fly and (2) Not previously watchlisted [REDACTED] [REDACTED] individuals added to watchlist and upgraded to Selectee	[REDACTED]	2/25/2010	06/30/2011

Source: Terrorist Screening Center

We discussed the deep dive reviews with the TSC Chief Counsel who acknowledged that they took a long time to complete. She said that the watchlist modifications made following the December 25, 2009, incident had been intended to mitigate the potential for another attack and resulted in a significant number of individuals having their watchlist status altered. Because the majority of these individuals were [REDACTED], the increased workload resulting from the deep dive reviews fell primarily to agencies other than the FBI. The TSC Chief Counsel stated that these agencies did not have sufficient resources to review historical records for the number of individuals upgraded in a more timely fashion.

The TSC Director said that he was especially concerned about the operational impact posed by the upgrades [REDACTED] to the No Fly List. Many of these individuals did not qualify for inclusion in the watchlist, much less elevation to

⁵⁸ All numbers are approximate counts of persons. For a more detailed analysis of the results of the deep dive reviews, please see Appendix IV.

the No Fly List, based upon the criteria that previously were in place. Because these individuals [REDACTED], they were more likely to travel and be encountered.⁵⁹ Although the TSC complied with the initial direction and promptly upgraded these individuals to the No Fly List, the direction did not define the amount of time the upgrades would last. Moreover, the direction did not provide the TSC with guidance regarding the criteria and procedures for reviewing these records until after the TSC experienced a surge in the number of encounters with individuals on the No Fly List. Once it received the guidance and results of the in-depth reviews conducted by others in the Watchlist Community, the TSC worked to quickly process the necessary adjustments to the watchlist records for the [REDACTED]. However, as noted above, the process of completing the deep dive reviews of the individuals with altered watchlist statuses resulting from the other initiatives took much longer to complete.

According to the TSC Chief Counsel, the then-existing watchlist guidance did not contain instructions on how to handle such immediate, threat-based watchlist status changes for whole categories of individuals. Following the December 25 events, the White House directed the TSC to develop recommendations on whether adjustments should be made to the watchlisting nomination criteria, including the biographic and derogatory criteria for inclusion in TIDE, TSDB, the No Fly List, and the Selectee List.⁶⁰ During the resulting discussions, new policy was developed to govern the types of temporary upgrades to the consolidated watchlist and No Fly and Selectee Lists that were made following the attempted plane bombing on December 25, 2009.

[REDACTED]

[REDACTED]

⁵⁹ As previously discussed, if the individual was encountered, the TSC reviewed the nature of the derogatory information and made adjustments in watchlist status, when necessary.

⁶⁰ We discuss the review led by the TSC in greater detail later in this finding.



TSC Documentation Supporting Watchlist Modification

TSC officials told us that the TSC did not document completely its actions with respect to the watchlist status modifications in the early days following the failed terrorist attack on December 25, 2009. The officials attributed some of the difficulty to the need to focus on operational concerns during the immediate crisis situation. As a result, the TSC struggled to reconstruct its actions and was unable to provide us with a complete listing of all the records that were modified during the earliest days following the attack. Because the modifications did not meet the watchlist guidance then in effect and the TSC did not have written confirmation of the directives, we believe that the TSC should have been more vigilant in retaining the necessary evidence to document its actions.

We were told by the former TSC Administrative Unit Chief that he recognized that there was a gap in the TSC's operational documentation. As a result, he directed his administrative staff to begin compiling the necessary documentation to assist executive and operational staff, and this documentation was included as attachments to an electronic communication dated February 17, 2010. The electronic communication contains a summary and numerous attachments that document the TSC's actions as of February 17, 2010, including the number and types of records modified and the dates the modifications occurred. However, it does not contain documentation regarding subsequent key decisions and actions taken by the TSC, such as its involvement in the deep dive reviews. Also, we found that the communication and its attachments had several internal inconsistencies regarding the number and types of records modified, the dates the TSC received the directions regarding those modifications, and the dates the modifications occurred.

In addition, the TSC's Nominations and Data Integrity Unit (NDIU) prepared two additional electronic communications, dated October 5, 2010, and December 17, 2010, respectively, in which it summarized information related to the status of the deep dive reviews.⁶¹ In addition to information on the status of the deep dive reviews, these two electronic communications contained similar information to the February 2010 electronic communication, including the number and types of records modified and the dates the modifications occurred. However, these two electronic communications only contain summary information and do not contain a comprehensive explanation regarding the watchlist modifications, including how the numbers related to each other and how they evolved as tasks

⁶¹ The Nominations and Data Integrity Unit (NDIU) is the TSC unit responsible for ensuring the quality and accuracy of the watchlist.

were completed. In addition, the electronic communications did not contain the documents used by the TSC to track its actions related to the deep dive reviews, including spreadsheets and charts.

Moreover, when we reviewed the three electronic communications from February, October, and December 2010, we found significant inconsistencies regarding the dates on which the TSC received direction to modify the watchlist statuses, the numbers of individuals for whom statuses were modified, and the dates on which the modifications were made.

For example, in the February 17, 2010, electronic communication, the TSC reported that on December 31, 2009, it identified ██████ persons in the TSDB who met the threat-based criteria for watchlist status modification. Of the ██████, the TSC reported that it upgraded ██████ persons to the Selectee List. However, in the NDIU's October 2010 electronic communication, the TSC reported that it upgraded approximately ██████ persons to the Selectee List.

Further, the February 17, 2010, electronic communication contains limited information regarding the direction for the upgrades for ██████, as well as the date the instructions were provided to the TSC. In that communication, the TSC reported that this request affected the watchlist status of ██████. However, in the October and December 2010 electronic communications, the TSC reported that it had modified the watchlist status of ██████.

When we discussed these discrepancies with the TSC at our audit close-out meeting and in subsequent communication, officials indicated that the electronic communications were intended to be iterative in nature, representing a snapshot of the populations impacted by the actions. The TSC provided explanations that helped to account for the discrepancies in the numbers of individuals impacted in the two examples cited above. Although the TSC's explanations accounted for the differences and provided the necessary connections between its iterations of the events, the explanations did not address why those connections were not previously documented in its accounts. We believe that the TSC should have done a better job explaining in its electronic communications at the time how the numbers related to each other and how they evolved as tasks were completed, as well as formally documenting all directions received and actions taken.

We discussed this issue with a TSC official who acknowledged the difficulty in maintaining the necessary documentation during crisis situations. The official also said that he believed that the FBI had the necessary procedures in place to ensure major events are properly documented and recalled the difficulties doing so while working in an FBI field division when the terrorist attacks of September 11, 2001, occurred. However, the official noted that the December 25, 2009, event was the first major attempted terrorist attack that the TSC experienced as an organization, and TSC personnel were relatively inexperienced and may not have retained documentation for all of its actions. The TSC official said he believed that TSC

personnel now have a greater appreciation for what types of actions need to be documented.

We also discussed this issue with the Director of the TSC who said that the TSC did experience difficulties in managing these bulk, threat-based watchlist modifications. The TSDB does provide the TSC the ability to track, on a record-by-record basis, the date a record was modified, as well as the identity of the user responsible for modifying the record. However, the TSDB did not permit the TSC to easily generate a listing of all of the records modified in response to the incident on December 25, 2009. As a result, the TSC relied on largely manual processes to track the watchlist modifications and deep dive reviews. Further, according to the TSC Director, the TSDB did not contain critical data [REDACTED] to readily identify individuals who met the threat-based criteria.

To help address these weaknesses, the TSC Director said that the TSC modified the TSDB by creating a tagging feature for watchlist identities. The tagging feature allows a user to assign an administratively created tag to a watchlist identity that will allow the user to categorize the identity as necessary. The TSDB reported that it now can create tags in the TSDB that correlate to particular threat-based populations. As such a category of individuals is identified as a potential threat, the watchlist actions can be taken, and the watchlist records tagged. When the threat abates, the watchlist actions can be reversed and the tags removed from the watchlist records. The TSDB now has the ability to track the complete history of which tags were applied to an identity and, therefore, which identities were related to a threat-based initiative.

To further improve the TSDB, the TSC Director said that the TSC is working to develop a new version of the TSDB that will allow the TSC to not only more efficiently identify individuals who meet threat-based criteria, but also to track the resulting watchlist record modifications. This database modification goes beyond the TSDB tagging feature by assisting in the identification of records meeting declared criteria. The TSC Director anticipated that this modification to the TSDB should help the TSC ensure that all watchlist records for future threat-based modifications are tracked, reviewed, and returned to the appropriate watchlist status for each individual once the threat subsides. The TSC anticipated that this information technology solution would be fully implemented in July 2013.

The failed attack on December 25, 2009, was the first major attempted terrorism event for the TSC, and we understand that maintaining documentation may not be the primary focus during a crisis situation. However, because of the inconsistencies in the TSC's documentation regarding the number and types of records modified and the dates the modification occurred, we have concerns about the TSC's ability to ensure that all watchlist records that were modified as a result of the attempted attack were reviewed and returned to the appropriate individualized status. The recent and planned improvements to the TSDB appear to be steps forward, but we believe that the TSC should develop a comprehensive

procedure to ensure that watchlist modifications resulting from emerging threats and other emergency actions are properly and accurately documented.

TSC Managerial Continuity and Significant National Security Events

We believe that it is essential that the TSC maintain operational readiness at all times. We believe that the failed terrorist attack of December 25, 2009, highlighted a potential vulnerability in the U.S. protective response to such an event because it occurred on a national holiday, which fell on a Friday, and at a time when many federal employees take vacation time.

The executive management team was designed to provide the TSC with ample experience and oversight from each of the participating agencies.⁶² However, in the immediate aftermath of the failed attack on December 25, 2009, we found that key managers were on leave and that several positions were vacant or occupied by individuals who were relatively new to the TSC. Many of these individuals were available by telephone and e-mail, and evidence exists to document their involvement in the ongoing discussions of the government's response to the unfolding events.

TSC officials said that in the immediate days following the attempted attack, the environment at the TSC was highly energized and hectic. As a result of changes in the watchlist modification directions and the previously described technical issues with TIDE and the TSDB, the TSC's course of action repeatedly changed during this time. Although they believed that the TSC ultimately responded to the crisis correctly, the officials said that the response may not have been as efficient and as organized as it could have been. For example, as discussed above, the TSC also failed to fully document its actions during the immediate days following the attack. It was not until the Administrative Unit Chief, an FBI employee, returned to the TSC several days after the attack that the TSC began to appropriately document the actions that had been taken in the immediate aftermath of the event.

Because the TSC is responsible for ensuring the accuracy and integrity of the watchlist and coordinating the U.S. government's response during encounters with known or suspected terrorists, we believe that the TSC must ensure that its executive management team possesses sufficient historical knowledge and experience to effectively manage any emerging crisis and should identify a core group of positions that must be physically available in some combination at all times.

⁶² The TSC is administered by the FBI with support from the Departments of Justice, Homeland Security, and State. The Memorandum of Understanding governing the TSC provides that the Director of the TSC will report to the Attorney General through the FBI and requires that the Principal Deputy Director of the TSC be an employee of DHS. The TSC executive management team also includes a Deputy Director for Operations (an FBI employee), and the Deputy Director - Liaison (a State Department employee). In December 2009, the team also included a Chief of Staff (a DHS employee), Chief Counsel (an FBI employee), Administrative Officer (an FBI employee), and Chief Information Officer (an FBI employee).

Review of the U.S. Watchlisting System

Following the failed terrorist attack, the White House directed a review of the U.S. watchlisting system and the performance of the intelligence, homeland security, and law enforcement communities related to the attempted bombing. The investigation revealed that the federal government possessed all of the information necessary to place the subject on the consolidated terrorist watchlist and prevent him from flying to the United States. However, personnel did not search all available databases and failed to identify, correlate, and fuse into a coherent account all of the discrete, fragmented pieces of information. As a result, NCTC did not provide the TSC with information to watchlist the individual who had committed the failed attack and the TSC was not aware of the individual or involved in any actions related to him until after the event.

In its January 7, 2010, memorandum, the White House directed the TSC to develop recommendations on whether adjustments should be made to the watchlisting nomination criteria, including the biographic and derogatory criteria for inclusion in TIDE, the TSDB, and the No Fly and Selectee Lists. In addition, the TSC was directed to conduct a thorough review of the TSDB and determine the current visa status of all known or suspected terrorists, beginning with individuals on the No Fly List.

According to TSC officials, they met numerous times with representatives from the CIA, the Office of the Director of National Intelligence (ODNI), the National Security Agency (NSA), the NCTC, and the Departments of Justice, Defense, State, Treasury, and Homeland Security. These representatives reviewed the then current watchlisting protocol to determine what changes were needed.⁶³ According to TSC officials, the revised Watchlist Guidance was approved by an interagency process on May 25, 2010. Following a multi-agency classification review and minor revisions, the final Watchlist Guidance containing these revisions to the watchlisting protocol was issued in July 2010.⁶⁴

Conclusion

Following the failed attempted airline bombing on December 25, 2009, the TSC was verbally directed, through an interagency process, to make temporary watchlist status modifications for certain categories of individuals based on emerging threat information. However, the then-existing watchlist guidance did not address such immediate, threat-based status changes for whole categories of individuals. In some instances, the TSC was directed to include individuals on the watchlist for whom the U.S. government did not possess sufficient information to support inclusion on the watchlist based on pre-existing criteria, but that

⁶³ Protocol Regarding Terrorist Nominations, February 2009.

⁶⁴ As noted previously, the Watchlist Community issued new Watchlist Guidance in March 2013, but because the policy document was issued outside the scope of this audit, we did not address it in this report.

government officials believed necessary due to the threat reporting received at that time.

Although the threat-based watchlist modifications were not covered by the then-existing watchlist protocol, the initial directions were not provided or confirmed in writing. As a result, we found that there was the potential for confusion regarding the specific directions provided. In addition, the lack of written direction left the TSC vulnerable to challenges from individuals who believed they were unjustly included on the watchlist.

Further, throughout the successive modification initiatives, we found that the TSC experienced operational, technical, and administrative issues. As a result, in the immediate aftermath of the attempted attack, certain downstream screening agencies did not possess critical terrorist watchlist information about individuals who might pose a potential threat to national security. In addition, because some of the modifications did not conform to the then-existing policy, the TSC was forced to bypass its normal procedures to distribute the information to downstream screening agencies.

Although the TSC confirmed in writing the directions it had been provided regarding watchlist modifications, we also found that the TSC did not adequately document its actions regarding the modifications in the early days following the failed terrorist attack. As a result, the TSC struggled to reconstruct its actions and was unable to provide us with a complete listing of all the records that were modified during the earliest days following the failed terrorist attack.

Finally, in the immediate aftermath of the attempted attack, we found that several positions were vacant or occupied by individuals who were relatively new to the TSC and that, although key TSC managers were available by phone and e-mail, they were not physically present at the TSC. We believe that a lack of sufficient numbers of executives with historical knowledge and experience at the TSC likely contributed to some of the issues we identified.

Recommendations

We recommend that the FBI:

1. Require the TSC to develop formal and comprehensive procedures for the full documentation of crisis events that may result in expedited watchlist upgrades or other emergency actions related to the watchlist. The procedures should address the types of documentation that must be retained, the method of retention, the length of time the documents must be retained, and the individuals responsible for collecting and maintaining the documentation.
2. Require the TSC to continue the development and implementation of enhancements to the TSDB that will allow the TSC to more efficiently identify individuals who meet threat-based criteria and to track any

resulting watchlist record modifications, and also to ensure that modified records are subsequently reviewed in a timely fashion to determine their appropriate watchlist status after the specific threat has passed or the designated period of modification has expired.

II. FBI WATCHLIST NOMINATIONS AND REMOVALS

During our previous audits of the FBI's watchlist processes, we found that the FBI failed to nominate to the watchlist subjects of terrorism investigations, completed nominations to the watchlist in an untimely manner, and failed to remove subjects of closed terrorism investigations from the watchlist. Generally, we found in this review that the improvements implemented by the FBI as a result of our previous audits have helped to ensure that the watchlist is more complete, accurate, and current. Despite these improvements, we found that the FBI's December 2010 watchlist policy provided a more restrictive set of criteria for inclusion in TIDE and TSDB than outlined by the Watchlist Community.⁶⁵ As a result, FBI case agents were not submitting certain terrorism information to NCTC and the TSC for inclusion in TIDE and the TSDB. Therefore, information about known or suspected terrorists may not have been available to the Watchlist Community for analysis and for possible inclusion on the watchlist. In addition, we found that the improvements implemented by the FBI did not ensure that all subjects of FBI investigations were nominated to the TSDB when the investigation is open or are removed from the watchlist when the investigation is closed. We also found that the FBI maintained redundant and inefficient processes which hampered its ability to process watchlist actions in a more timely manner, and the FBI could further refine its policies by tightening its requirement for case agents to submit nomination and removal actions.

Background

Because of the vital role the consolidated watchlist plays in the detection and apprehension of known or suspected terrorists, it is essential that all subjects of FBI investigations be nominated to the watchlist as quickly as possible. Similarly, individuals should be removed promptly from the watchlist when the government no longer has a reasonable suspicion that the person is a known or suspected terrorist. Leaving individuals on the watchlist longer than necessary increases the chances that these individuals will be stopped or detained during an encounter. In addition, retaining these obsolete records can make it more difficult to accurately identify positive matches to known or suspected terrorists because of similarities in certain peoples' identifying information. Further, retaining individuals on the watchlist needlessly increases the size of the watchlist and wastes resources required to maintain and search it.

⁶⁵ The FBI Counterterrorism Division (CTD) issued updated watchlist policy guidance in March 2012. We discuss that policy later in this finding.

In our last two reviews, we identified significant weaknesses with the FBI's management of the terrorist watchlist. We made 22 recommendations to the FBI to help ensure that the FBI's watchlist actions were accurate, complete, and timely.

As part of this review, we evaluated whether the FBI's new processes helped to ensure that subjects of FBI investigations were nominated to and removed from the consolidated terrorist watchlist in compliance with FBI policy. Generally, we found that the improvements implemented by the FBI as a result of our previous audits had helped to ensure that the watchlist was more complete and accurate, and nominations from field divisions were submitted in a more timely manner. However, we also identified areas in which we believe the FBI can improve further its processing of watchlist nominations and removals.

In this finding, we first discuss the initiatives implemented by the FBI as a result of our previous audits. Then we assess the impact of these initiatives on the FBI's watchlist nominations for subjects of its preliminary and full terrorism investigations. We conclude this finding with our analysis of the FBI's efforts to remove subjects of closed terrorism investigations from the watchlist.

Recent FBI Watchlist Initiatives

The FBI reported that it had taken a series of corrective actions in response to the recommendations contained in our prior audits.⁶⁶ Below, we provide an overview of each initiative and then discuss the initiative's impact on FBI operations.

FBI Watchlist Guidance

Following our previous audits, DOJ and the FBI conducted a review of their watchlisting policies and procedures to improve their processing of watchlist actions. During its review, the FBI reported that it found it had issued over 40 electronic communications addressing watchlisting during a 5-year time span. The FBI reported that this large volume of sometimes conflicting policies contributed to employee confusion regarding watchlist procedures. The FBI consolidated its existing guidance and in December 2009 issued a single policy document governing watchlisting.

The FBI's internal guidance provides more comprehensive instructions regarding criteria for inclusion on the watchlist of known and suspected terrorists who are the subjects of FBI investigations. In addition, the guidance outlines the

⁶⁶ The Office of Management and Budget (OMB) and DOJ have issued policies and procedures for following-up on recommendations of audit reports. These policies are intended to ensure the prompt and proper resolution and implementation of audit recommendations. During this process, the OIG elicits responses from components regarding planned corrective actions. When received by the OIG, the responses are reviewed to determine whether the planned corrective actions meet the intent of the recommendations. When appropriate, the OIG performs subsequent audit work to assess the implementation of certain actions, as we have done in this instance.

conditions under which the FBI may retain individuals on the watchlist for whom the FBI does not have an active investigation, referred to as "non-investigative subjects." The guidance also provides FBI case agents with specific procedures for nominating subjects to the watchlist, modifying existing watchlist records, and removing subjects from the watchlist, including submission and processing timeframes. Further, the FBI included performance metrics for the submission and processing of watchlist actions by its field divisions and headquarters personnel.

Following the failed terrorist attack on December 25, 2009, the FBI reissued its internal watchlist policy to incorporate the modifications made in the TSC's watchlist guidance. Issued in December 2010, the new FBI policy provided guidance on the changes to the reasonable suspicion standard, including a description of particular activities that a nominator should consider in determining whether there is a reasonable suspicion that a person is a known or suspected terrorist. In addition, the FBI's internal guidance was updated to include the new criteria for the No Fly List.

FBI Metrics and Compliance Process

In April 2009, the FBI implemented a new process to monitor its performance related to watchlist actions, including ensuring that subjects of FBI investigations are appropriately watchlisted. The FBI created within TREX a new Metrics Team that is responsible for tracking FBI field division and headquarters compliance with FBI watchlist policies, including the newly established timeframes for processing watchlist actions.

On the first workday of each month, the Metrics Team runs a report of all preliminary and full international and domestic terrorist investigations that were opened or closed by the FBI during the prior month. The Metrics Team reviews the report to identify the watchlist actions required for terrorism investigations opened or closed during the past month. For example, the opening of new international terrorism investigations should cause the field division to submit a watchlist nomination form to TREX, and the closing of such a matter should trigger a request to remove the corresponding watchlist record.

The TREX Metrics Team then manually compares the case opening and closing information against watchlist actions submitted by the field divisions. Through this comparison, the Metrics Team attempts to identify open or closed terrorism investigations that lack a corresponding nomination or removal package. When the Metrics Team analyst identifies an FBI terrorism case for which the nomination or removal package has not been submitted, the analyst contacts the case agent and requests that the appropriate package be submitted.

The Metrics Team also compiles the data and calculates the amount of time taken by both the field division and TREX to process nomination and removal watchlist actions. The information is compiled in spreadsheets and consolidated

into monthly reports that are distributed to the field divisions and FBI headquarters management for review.

New Database

In June 2011, the FBI implemented a new database, entitled the Known or Suspected Terrorist (KST) Watchlisting Database. This new database replaced the FBI's existing electronic processes for submitting watchlisting actions. According to TREX, the new KST Database allows case agents to prepare and track watchlist nomination forms and this should make those actions more efficient. Case agents should enter information into a specially formatted document template and once the document is submitted, the information is automatically entered directly into the database and is available electronically for TREX's use. As a result, TREX staff believe that the new database should help to reduce the need for manual data entry and the associated data entry errors, as well as improve the timeliness with which the FBI submits and processes watchlist actions.⁶⁷

TREX Reorganization

In July 2009, the FBI reorganized TREX to help streamline its processing of watchlist actions.⁶⁸ Under the new structure, requests from the field for watchlist actions are submitted electronically to a centralized repository at TREX where they are segregated according to the type of action – nomination, modification and removal, or non-investigative subject. Watchlist actions are then processed by a team of specialized analysts. TREX now has one team that is responsible for processing all FBI watchlist nominations and another team responsible for processing all FBI watchlist modifications and removals. In February 2010, the FBI also formed a new team within TREX, the Non-Investigative Subject Team, to manage and monitor watchlist records related to non-investigative subjects.

Near the end of our audit, the FBI reorganized its Counterterrorism Division (CTD). On March 5, 2012, the FBI transferred TREX from CTD's National Threat Center Section to the TSC.⁶⁹ According to FBI documents, the FBI anticipates that this consolidation of TREX within the TSC will help to streamline FBI

⁶⁷ The FBI is implementing a new case management system. Later in this finding, we briefly discuss the FBI's case management system, as well as the FBI's future plans for the system as it relates to watchlisting.

⁶⁸ During our previous reviews, when TREX received a watchlist nomination, modification, or removal form from an FBI field division, that request was forwarded to the employee responsible for that specific field division. We found that assigning work to TREX staff by field division contributed to the FBI's untimely processing of watchlist actions when staff were unexpectedly absent. As a result of our review, TREX modified its processes and organizational structure as described above.

⁶⁹ The FBI's National Threat Center Section is housed within the CTD. The section is the focal point for all incoming threat information, including the preliminary analysis of emerging international and domestic terrorism threats and assignment for immediate action within the FBI.

watchlist nominations by eliminating review functions that previously were duplicated.

FBI Watchlist Nominations

When an FBI field division opens a preliminary or full terrorism investigation, FBI policy requires that FBI headquarters be notified within 10 business days of the initiation of the investigation. To accomplish this, the case agent prepares an electronic communication that is submitted for supervisory approval. Once the field division supervisor approves the opening of the case, the electronic communication is uploaded into the FBI's automated case management system (which formally opens the case within the FBI). FBI policy requires that the electronic communication in a terrorism matter contain an "action lead" or an electronic prompt that notifies FBI headquarters of the case opening. FBI policy also requires that the field division include in the electronic communication an action lead to TREX requesting that the subject be entered in all appropriate government watchlists.

To assess whether the FBI's new metrics and compliance processes helped to ensure that subjects of FBI investigations were nominated to the consolidated terrorist watchlist in compliance with FBI policy, we reviewed FBI TREX Metrics Team and corresponding watchlist data. We reviewed Metrics Team and watchlist data for 115 subjects of preliminary and full domestic or international terrorism cases *opened* during the first quarter of FY 2011 in four FBI field divisions: Chicago, Illinois; Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota.⁷⁰ In addition, to assess the impact of the FBI's new KST Database, we reviewed nomination data for watchlist actions processed using the new database.⁷¹ Specifically, we reviewed nomination data for 120 subjects of preliminary and full domestic or international terrorism cases *opened* during the fourth quarter of FY 2011 pertaining to the aforementioned four FBI field divisions.

Generally, we found that the improvements implemented by the FBI as a result of our previous audits helped to ensure that the watchlist is more complete, accurate, and current. Despite these significant improvements, however, we identified areas in which we believe the FBI has opportunities to improve its processing of watchlist nominations.

Subjects Not Watchlisted

In our previous audit, we found that the FBI had not consistently nominated known or suspected terrorists to the consolidated terrorist watchlist in accordance

⁷⁰ There were 113 cases opened in these four field division locations during the first quarter of FY 2011. However, one case had multiple associated subjects. Appendix I contains additional information about our audit scope and testing methodology.

⁷¹ Because the FBI implemented its new KST Database in June 2011, we tested watchlist data for the fourth quarter of FY 2011 and compared the results to the FBI's prior performance.

with FBI policy.⁷² During our current review, we found that the FBI's metrics and compliance process helped to significantly reduce the number of subjects of FBI cases that were not nominated to the watchlist. Compared to our previous audit in which 15 percent of the subjects of the cases we reviewed were not nominated to the watchlist, during our review of 115 subjects in our sample of investigations opened during the first quarter of FY 2011, we did not identify any subjects who were not nominated to the watchlist as required by FBI policy.

However, we still found subjects of cases opened prior to the first quarter of FY 2011 who had not been nominated to the watchlist. During our review of the Metrics Team's analysis of actions taken on 1,018 cases closed during January 2009 through December 2010 in the four field divisions in our sample, we found that the Metrics Team's monthly results indicated that a total of 19 subjects (nearly 2 percent) had not been nominated to the watchlist while the case was open. Further, during our review of non-investigative subjects, we found an additional four subjects of investigations that closed during 2010 who had not been nominated to the watchlist while the case was open.⁷³ When these four subjects were nominated to the watchlist later in 2010, they were all nominated to the No Fly List.

We asked the Metrics Team Leader how this may have occurred. She indicated that an individual who is an appropriate candidate for the watchlist may be identified at the opening of an investigation, but the case agent may not yet possess sufficient identifying information to permit watchlisting. [REDACTED]

[REDACTED]. Once the case agent obtains sufficient biographical information, the case agent may forget to submit the appropriate paperwork to have the individual watchlisted. The FBI reported that its supervisors are required to conduct regular case file reviews with case agents to help ensure the subjects are appropriately watchlisted. However, despite these supervisory reviews, the subjects we identified still were not nominated to the watchlist while the case was open.

According to the FBI's December 2009 and December 2010, watchlist policies, case agents were directed to submit a watchlist nomination package for subjects of both preliminary and full domestic and international terrorism

⁷² During our review in May 2009, we reviewed a total of 216 cases that were initiated or closed during FY 2006, FY 2007, and the first half of FY 2008 in the following field divisions: Los Angeles, Miami, and Minneapolis.

⁷³ These 4 were included within 49 requests for the watchlisting of non-investigative subjects that we reviewed for cases closed after December 7, 2009, and processed by the FBI during the period of January 2010 to December 2010. The watchlisting of non-investigative subjects, including the timeliness of such actions, is discussed in detail in Finding III below, and these four nominations are specifically identified in Exhibit 4-1.

investigations.⁷⁴ Yet, later in the same policy, case agents were instructed that they were to submit the watchlist nominations only once the case agent possessed sufficient identifying information – [REDACTED]. If there was insufficient identifying information when the investigation was first opened, then the case agent was required to submit the watchlist nomination once the subject's information was obtained at a later date.

During our examination of documents regarding the Watchlist Community's review of watchlisting practices following the attempted terrorist attack on December 25, 2009, and the resulting revision of the Watchlist Guidance, we noted that there were substantial discussions about the amount of biographical information needed for watchlisting and the sharing of intelligence information within the Watchlist Community. Specifically, these discussions included the expression of concerns that some agencies were only nominating individuals for whom the U.S. government possessed [REDACTED]. In response, the Watchlist Community directed several agencies to review their historical data to determine if individuals not previously watchlisted should be nominated to the watchlist. The FBI was not one of the agencies directed to review its historical practices.

We asked the TSC Director and Chief Counsel about the FBI's policy and the Watchlist Community concerns about the inconsistency in the threshold for identifying information required for nominations. The TSC Director and Chief Counsel agreed that the FBI's December 2009 and December 2010 policies appeared to restrict the FBI's watchlist nominations, as well as the amount of terrorism information shared with NCTC. These officials said they believed that, in cases where the FBI has a reasonable suspicion to believe the subject is a known or suspected terrorist, the FBI should be forwarding all identifying information to NCTC for analysis and possible watchlisting, even when only partial biographical identifiers are available.

The TSC Director said he believed that sending all FBI terrorism information to NCTC and TSC provided the opportunity for terrorism information to be integrated and augmented and may help to further reduce the number of subjects of FBI investigations who are not watchlisted. The TSC Director said that once the FBI submits the terrorism information to NCTC and the TSC, the information would be available for analysis by the Watchlist Community. Other members of the Watchlist Community might possess additional biographical information about the FBI subject that, when combined with the FBI's information, would provide sufficient information for watchlisting.

We reviewed the FBI's nomination practices in instances where FBI terrorism cases had been opened on [REDACTED]. Of the 115

⁷⁴ The FBI's policies on investigative activity and related watchlist nominations are discussed in detail in the Introduction section of our report under the heading "Overview of Internal FBI Watchlist Processes." As discussed, FBI policy permits the exclusion from the watchlist of subjects of full domestic terrorism investigations that focus on groups or organizations that are involved in national security threats to the public.

subjects in our sample of investigations opened during the first quarter of FY 2011 in four field offices, we identified 39 subjects for whom the field office opened a terrorism investigation when they did not possess [REDACTED]. As shown in Exhibit 3-1, of the 39 subjects lacking [REDACTED], we found that for 8 of these subjects the FBI possessed a [REDACTED] at the time the case was opened, thus meeting the identifying information standard for the TSDB. Five of the subjects with [REDACTED] were the subject of a full investigation and, therefore, would also necessarily meet the reasonable suspicion standard for watchlisting. However, the field division submitted a watchlist nomination package for just one of these eight subjects.

Exhibit 3-1
Sample FBI Cases with Subject Information
Less than [REDACTED]
by Investigation Type

	Preliminary Investigation	Full Investigation	Total
[REDACTED] only	2	4	6
[REDACTED] only	1	0	1
[REDACTED] only	0	1	1
Total	3	5	8

Source: OIG analysis of FBI data

For the one subject for whom the field office did submit a watchlist nomination, the case agent possessed only the subject's [REDACTED]. According to the Metrics Team Leader, the case agent initially did not submit a watchlist nomination package at the time the case was first opened. Upon further searches of TIDE, the case agent found that the [REDACTED] matched other fragmentary information for an individual already included in TIDE. The case agent identified this information in TIDE more than 2 months after the opening of the investigation and thereafter submitted the nomination.

In August 2011, we discussed the results of our analysis with FBI CTD officials and expressed our concern that the FBI's December 2010 policy was inconsistent with the Watchlist Community Guidance, thereby unduly restricting the FBI's sharing of information with NCTC and the FBI's nominations to the watchlist.⁷⁵

Despite the results of our review, the FBI CTD officials said that they believed that the FBI's December 2010 policy was sufficient. That policy indicated that case agents should submit nominations to TREX for all subjects of preliminary and full terrorism investigations, so that TREX can evaluate whether the reasonable suspicion standard had been met for watchlisting. FBI CTD officials stated that they believed this worked well. These officials said that TREX was best qualified to

⁷⁵ For inclusion in TIDE, NCTC requires that the nominating agency provide evidence of a nexus to terrorism. However, regarding necessary identifying information, NCTC accepts fragmentary information without names, [REDACTED].

review the nomination and assess whether the subject warranted watchlisting in accordance with FBI policy. We acknowledge that such a process flow could work well if the policy was sufficiently clear, and FBI personnel were forwarding nominations for the subjects of all terrorism investigations. However, the results presented in Exhibit 3-1 above are from cases opened in the first quarter of FY 2011 and this aspect of the FBI's policy had been stated in the same way since at least December 2009. These results indicate that FBI personnel are not, in fact, submitting nominations in all instances. As a result, information on the subjects may not have been available to the Watchlist Community for analysis and possible watchlisting.

Following our discussions with FBI CTD and TSC officials, the FBI revised its watchlisting nomination guidelines in March 2012 to be more consistent with the minimum identifying criteria set forth in the July 2010 Watchlisting Guidance. For example, the FBI's nomination policy now has a distinct section that outlines the identifying criteria that is required for watchlisting, namely the subject's last name and at least one additional identifier (e.g., first name, [REDACTED] passport [REDACTED]). In addition, FBI personnel are informed that if they do not have one of the specifically named additional identifiers, watchlist nominations are required when two or more of certain additional identifiers are known (e.g., [REDACTED]).

Although the FBI's March 2012 policy now reflects the minimum identifying criteria set forth in the July 2010 Watchlisting Guidance, the policy still includes the following: [REDACTED]

[REDACTED]. The FBI should review its policy document to ensure that the multiple sections on watchlist nominations are internally consistent and work with the TSC to ensure that the policies are in line with the requirements of the Watchlist Community.

In addition, the FBI did not indicate whether it intended to review terrorism investigations opened under the previous policy guidelines to ensure that the individuals that meet the current criteria are now appropriately watchlisted. Therefore, we recommend that the FBI review the subjects of terrorism investigations opened under its previous policy guidelines to determine whether the FBI possesses sufficient biographical and derogatory information under the revised policy to support forwarding the information to NCTC for review and potential watchlisting.

Timeliness of Watchlist Nominations

Following our previous audit examining the timeliness of the FBI's watchlist nominations, the FBI revised its time requirements as outlined in its policy

document dated December 2009.⁷⁶ As shown in Exhibit 3-2, when it implemented its December 2009 watchlist guidelines, the FBI retained the existing requirement for its field divisions to submit non-expedited watchlist nominations to TREX within 10 business days of the date the case is opened in the FBI's case management system.⁷⁷ For TREX, the FBI increased the amount of time allocated for processing watchlist nominations.

Exhibit 3-2
FBI Watchlisting Compliance Timeline - Nominations

	Field Division	TREX
Prior	10 business days from date case is opened in case management system.	24 hours from receipt of complete package from field division.
New	10 business days from date case is opened in case management system.	5 business days from receipt of complete package from field division.

Source: Federal Bureau of Investigation

Prior to December 2009, TREX's goal was to complete its processing of watchlist nominations within 24 hours of receiving a complete package from the field.⁷⁸ Under the 2009 and subsequent guidelines, TREX is now required to complete its processing of watchlist nominations within 5 business days of receiving a complete package from the field. The FBI attributed the need to increase the processing time for TREX to the expanded role that TREX now has in independently verifying the accuracy of each identifier on the nomination form and searching relevant databases for additional identifiers.⁷⁹

Based on our review of TREX Metrics Team and watchlist nomination data, we found that overall the FBI has significantly improved its compliance with FBI

⁷⁶ The FBI has since issued new policy in December 2010 and March 2012. These new policies did not change the timeliness guidelines first established in December 2009.

⁷⁷ The only exception to this 10-business day rule is when the terrorism subject is being nominated to the TSA's No Fly List. In these cases, FBI policy requires that these subjects be nominated to the watchlist by the field divisions within 24 hours, and TREX must then process the nomination within 24 hours of receipt. The TSA's No Fly List includes names of individuals who will be denied transport on commercial flights because they are deemed a threat to civil aviation, U.S. facilities, or U.S. vessels. Following the attempted terrorist attack on December 25, 2009, the President directed that a review of the No Fly and Selectee List criteria be conducted. The committees that conducted the review recommended changes to the criteria and implementation guidance. Those recommendations were approved by the interagency working group on May 25, 2010.

⁷⁸ According to the FBI, at the time of our previous audit, TREX's responsibilities were more limited and analysts entered the subject's information into the FBI's National Crime Information Center (NCIC) and then forwarded the nomination package to the NCTC.

⁷⁹ We discuss the appropriateness of this change in timeliness requirement in the following section.

policy for nominations to the watchlist.⁸⁰ As shown in Exhibit 3-3, the FBI considerably reduced the number of untimely watchlist nominations from the 78 percent identified in our May 2009 audit to 14 percent for the first quarter of FY 2011.⁸¹ Further, the metrics and compliance process has helped to ensure that unwatchlisted subjects are identified sooner and placed on the watchlist. During our previous audit, we found that the maximum amount of time taken by the FBI to nominate a subject to the watchlist was 307 days. With the metrics and compliance process, the FBI reduced the maximum amount of time to just 15 days. Moreover, the FBI has reduced the average number of days that elapse between case opening and watchlisting from 42 days to 5 days. Similarly, the FBI has reduced the median number of days that elapse from 29 days to just 4 days.

⁸⁰ We identified some data entry errors in the Metrics Team calculations. However, the errors were minor and did not significantly impact the Metrics Team's results.

⁸¹ For purposes of our testing, we assessed TREX for processing watchlist nominations within 5 business days of receipt of a complete watchlist package. We considered a subject to be untimely nominated if either the field division or TREX exceeded its standard processing time. For example, if a field division submitted a nomination within 12 business days and TREX processed the nomination within 1 working day, we considered such a nomination untimely because the field division did not meet the timeliness standard.

EXHIBIT 3-3
Untimely Watchlist Nominations⁸²

	OIG Audit May 2009 ⁸³	1 st Quarter FY 2011 (Before KST Database Implementation) ⁸⁴	4 th Quarter FY 2011 (After KST Database Implementation) ⁸⁵
Number Tested	95	76	92
Number Untimely	74	11	17
Percent Untimely	78%	14%	18%
Minimum in Days	4	1	1
Maximum in Days	307	15	63
Average in Days	42	5	19
Median in Days	29	4	11

Source: OIG analysis of FBI data

During the implementation of the KST Database in the fourth quarter of FY 2011, the FBI and TREX experienced an increase from 14 percent to 18 percent in untimely nominations. We attribute some of the untimely nominations to normal reductions in productivity when new systems are implemented. In that regard, we found that, as the FBI gained familiarity with the new KST Database, the number of untimely nominations was lower in each month of the fourth quarter of FY 2011.

During the implementation of the KST Database, we anticipated relatively small increases in processing days. However, we noted that the maximum number of days that a subject was not watchlisted more than quadrupled from the first to the fourth quarter of FY 2011, and the average and median number almost quadrupled and tripled, respectively. According to the Metrics Team data, this was attributable to case agents continuing to forget to submit the nominations in a timely fashion.

⁸² To examine the 10-business day requirement for field divisions, we used the date the case was opened in the FBI's case management system and compared it to the date TREX received a complete nomination package from the field division. To examine the 5-business day requirement for TREX, we used the date TREX received the complete package from the field and the date TREX forwarded the nomination to the NCTC branch staffed by FBI personnel.

⁸³ During our review in May 2009, we reviewed the timeliness of FBI watchlist nominations for 95 cases that were opened during FY 2006, FY 2007, and the first half of FY 2008. The field divisions included Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota.

⁸⁴ There were 115 subjects of cases opened during the first quarter of FY 2011. During our review of the nominations for the subjects in our sample cases, we identified 39 subjects who did not meet the FBI's existing criteria for watchlisting. Therefore, we excluded these 39 subjects from our testing for timeliness.

⁸⁵ There were 120 subjects of opened cases in the four field divisions in our sample during the fourth quarter of FY 2011. During our review of the nominations for the subjects in our sample cases, we identified 28 subjects of terrorism cases who did not meet the FBI's existing criteria for watchlisting. Therefore, we excluded these 28 subjects from our testing for timeliness.

Although the FBI has significantly improved its overall compliance with existing time requirements, we believe that the FBI would benefit from further refining its processes and timeliness standards. The following sections discuss specific areas of improvement that we believe should be considered for the field divisions and TREX.

Field Divisions

Although the FBI field divisions have improved their compliance with existing timeframes, we believe that the timeframe permitted under FBI policy for the submission of watchlist nominations is unnecessarily long. Once a case agent receives supervisory approval to open a terrorism case, the case agent has 10 business days to submit a watchlist nomination. With TREX's additional 5 business days to process the watchlist nomination, it could take up to 15 business days from the date the FBI first becomes aware of an individual to the time the individual is submitted to NCTC or TSC for watchlisting. With 2 additional days allocated for NCTC and TSC review, the FBI's current guidelines allow up to 17 business days – or potentially more than 3 weeks – to elapse before a potential threat is nominated to the watchlist.⁸⁶

Based on our analysis of FBI watchlist data, we believe that the timeliness guidelines for the field divisions could easily be shortened. As shown in Exhibit 3-4, we found that the field divisions normally submit watchlist nominations in advance of the 10-business day requirement. The field divisions in our sample submitted approximately two-thirds of the watchlist nominations within 2 business days of opening the investigation in the automated case management system, and 80 percent of the nominations within 5 business days.

EXHIBIT 3-4
Watchlist Nominations Submitted by
FBI Field Divisions

Time Elapsed from Case Open to Nomination	Percentage of Nominations		
	OIG Audit May 2009	1 st Quarter FY 2011 (Before KST Database Implementation)	4 th Quarter FY 2011 (After KST Database Implementation)
1 day or less	19%	62%	51%
2 days or less	23%	72%	66%
3 days or less	28%	80%	70%
4 days or less	31%	86%	79%
5 days or less	34%	87%	80%
10 days or less	53%	89%	87%
>10 days	47%	11%	13%

Source: OIG analysis of FBI watchlist data

⁸⁶ For example, if the case agent received supervisory approval to open a terrorism investigation on Tuesday, May 7, 2013, an eligible subject might not be included on the watchlist until 24 days later, on Friday, May 31, 2013, and still be considered a timely nomination in light of weekends and an intervening holiday.

We discussed the metrics process and processing timeframes for nominations with headquarters and field division officials. These officials said that the metrics process has been a valuable tool for helping the field divisions to submit watchlist nominations in a more timely manner. However, several of the officials said that they believed that some of the watchlist processes could be further streamlined and improved. For example, current FBI policy recommends that preparing and submitting nomination forms at the same time as the case is opened as a "best practice." Several officials said that they believed that the field divisions could readily prepare and submit these forms at the same time as the case is opened.

Also, TREX officials said that the new KST Database should help case agents to prepare and submit watchlist nomination forms in a more timely fashion by eliminating redundant data entry. The new database incorporates a specially formatted form to generate the case opening electronic communication. When the case agent prepares the opening electronic communication, the information from the opening electronic communication automatically populates the watchlist nomination form. Therefore, the new database should further shorten the time to prepare the nomination form because the case agent enters case information only once.

In our May 2009 report, we recommended to the FBI that it evaluate the overall watchlisting process to determine the total amount of time that is reasonable and necessary to ensure a timely but thorough watchlisting process. In its April 24, 2009, response to this recommendation, the FBI stated that it had conducted such an evaluation. At that time, the FBI reported that it believed field divisions should submit non-expedited nomination packages to TREX within 2 days of receiving supervisory approval to open the case.

The final guidance issued by the FBI in December 2009 did not direct the field division to submit non-expedited nominations to TREX within 2 business days. Rather, the FBI maintained its original 10-business day timeframe for submitting watchlist nominations. The FBI did not provide an explanation for continuing its 10-business day timeframe. In correspondence subsequent to our audit, the FBI reported that its timeframe for submitting watchlist nominations would remain unchanged until sustained improvement in nominations was achieved. The FBI indicated that once sustained improvement had been achieved, it would re-evaluate its timeliness requirements.

Although the FBI did not adopt a 2-day nomination standard, in the first quarter of FY 2011 the field divisions in our sample were already submitting nearly three-fourths of the watchlist nominations within 2 business days of case openings, and nearly two-thirds within this time frame during the fourth quarter of FY 2011 (even with a new system).

In our opinion, retaining the existing 10-business day timeframe increases the potential risk that nominations may not be processed with a sufficient sense of urgency. By contrast, reducing this time standard would be a strong indication to

the field divisions that it is important to accomplish this essential national security task in an expeditious manner. Therefore, we recommend that the FBI re-assess its timeframe for field division watchlist nominations and also consider mandating as a requirement its current "best practice" that "nominations will be submitted at the same time as the opening communication." Considering the speed at which threats can develop and mature, as evidenced by the events on and immediately following December 25, 2009, we believe that the FBI should identify the means to achieve this "best practice" and mandate expeditious inclusion of eligible persons on the watchlist. We believe that FBI should explore technological solutions within its case management system that would automatically trigger the generation of a watchlist nomination when a case agent officially opens a case and has the requisite identifying information for nomination.

TREX

The comparison of TREX's current performance for processing watchlist nomination packages to its performance during the period under review in our May 2009 audit is complicated by TREX's expanded role in the nomination processes, as well as the relaxation of its timeliness standards.

As shown in Exhibit 3-5, during the period of review for our May 2009 audit, TREX processed 83 percent of watchlist nomination packages within 5 business days. For the 76 subjects of cases opened during the first quarter of FY 2011, TREX processed 95 percent of the nominations within 5 business days, resulting in a decrease from 17 percent to 5 percent in nominations that took TREX more than 5 days to process.

**EXHIBIT 3-5
Watchlist Nominations Processed by TREX**

Time Elapsed from Case Open to Nomination	Percentage of Nominations		
	OIG Audit May 2009	1 st Quarter FY 11 (Before KST Database Implementation)	4 th Quarter FY 11 (After KST Database Implementation)
1 day or less	53%	7%	5%
2 days or less	61%	11%	9%
3 days or less	70%	29%	30%
4 days or less	77%	54%	60%
5 days or less	83%	95%	89%
>5 days	17%	5%	11%

Source: OIG analysis of FBI watchlist data

However, the watchlist nomination packages that TREX processed in less than 5 days has significantly declined since our last audit. As previously discussed, at the time of our last audit TREX analysts verified that justification for the nomination existed, reviewed the nomination package for accuracy, verified that the subject met the criteria for inclusion on the watchlist, entered the subject's information into NCIC, and then forwarded the nomination package to the NCTC.

TREX attempted to process both watchlist nominations and removals within 1 business day of receipt. As shown in Exhibit 3-5, TREX met that goal just over half the time, and processed 70 percent of watchlist nominations within 3 business days of receipt. However, during this audit, we found that the percentage of nominations processed within 3 business days of receipt dropped to 29 percent for the first quarter of FY 2011 and 30 percent for the fourth quarter of that fiscal year.

TREX officials attributed this decline in the rapid processing of nominations to TREX's expanded role in independently verifying the accuracy of each identifier on the nomination form and searching relevant databases, including Intelligence Community records, for additional identifiers. In addition, TREX officials explained that TREX had experienced increases in workload resulting from the FBI's policy revision that now requires field divisions to submit watchlist nominations for subjects of nearly all domestic terrorism investigations.⁸⁷ Further, TREX officials said that they had experienced staffing shortages during the first quarter of FY 2011 because of extended leave.

To evaluate the impact of these factors on TREX's timeliness, we first discussed TREX's watchlist nomination process with a TREX senior analyst who said that TREX began searching other databases to supplement the information on the watchlist nomination form several years ago. According to the senior analyst, the old FBI nomination form did not contain critical information that could be included with the nomination, such as [REDACTED]. The senior analyst also said that TREX was performing many of the current database searches prior to our May 2009 audit. However, TREX did implement searches of at least two new systems since the last OIG audit.

We expressed our concerns to the FBI that watchlist nominations may have been unnecessarily delayed while TREX analysts searched for additional information that was not critical to placing these individuals on the watchlist. TSC officials informed us that as of December 2012, TREX does not search for the type of additional information discussed above.

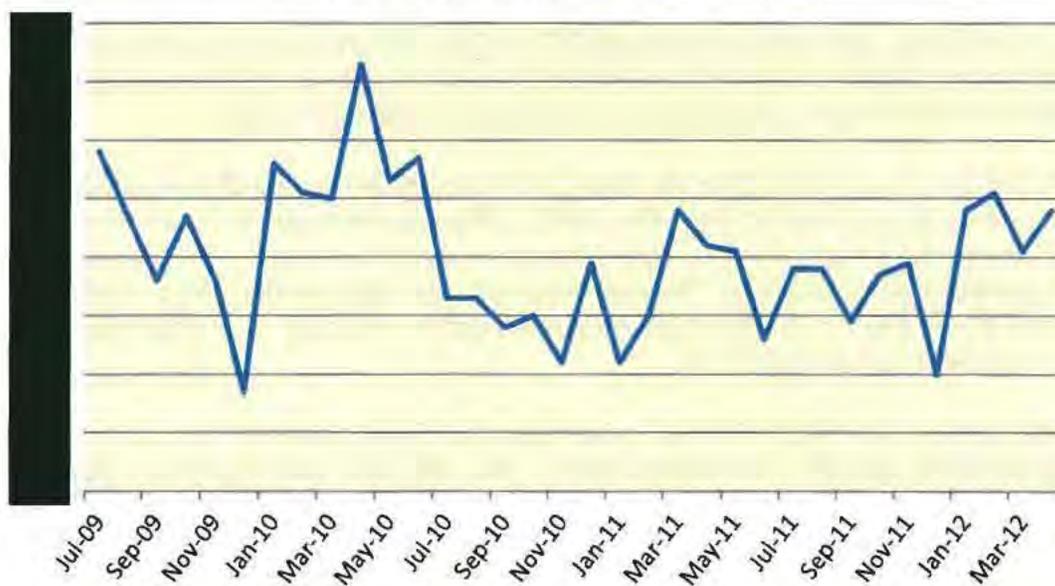
To evaluate the impact on workload of the FBI's policy revision that required field divisions to submit watchlist nominations for subjects of nearly all domestic terrorism investigations, we analyzed FBI data on the number of domestic terrorism nominations processed by TREX. As shown in Exhibit 3-6, during the period prior to the implementation of the FBI's new policy, TREX processed an average of [REDACTED] watchlist nominations for known or suspected domestic terrorists per month. During the first 6 months of calendar year (CY) 2010 following the implementation of the FBI's new policy, the FBI had an increase in the domestic terrorism nominations processed by TREX. During this period, TREX processed an

⁸⁷ As previously discussed in the Introduction, the FBI's previous policy stated that known or suspected domestic terrorists who are subjects of preliminary investigations could be nominated to the watchlist at the discretion of the responsible FBI field division. On December 7, 2009, the FBI revised its policy to require the nomination of subjects of most domestic terrorist investigations, including preliminary investigations.

average of █ domestic terrorism nominations per month. Following this peak period, TREX processed an average of █ domestic terrorism nominations per month.⁸⁸

Although TREX experienced an increase in the number of domestic terrorism nominations during the first 6 months following the implementation of the new policy, this time period also coincided with the failed terrorist attack of December 25, 2009. Further, during the second 6 months of CY 2010 following the implementation of the FBI's policy, the number of domestic terrorism nominations processed by TREX had declined to its pre-December 25th levels or an average of █ domestic terrorism nominations per month. Further, we also note that during the first quarter of FY 2011, the period for which we conducted our workload analysis, domestic terrorism nominations accounted for just 15 percent of the nominations processed by TREX.

EXHIBIT 3-6
Number of Nominations Processed by TREX
for Domestic Terrorism Cases
(July 2009 through April 2012)



Source: OIG analysis of FBI data

We also obtained TREX staffing and workload data. As shown in Exhibit 3-7, when compared to its workload and staffing levels at the time of our prior audit, TREX experienced a net increase of just over 1 percent in its workload during the first quarter of FY 2011. During the same period, TREX experienced a decrease of nearly 10 percent in its actual staffing levels. As a result, TREX staff each

⁸⁸ We calculated this average using the 22-month period of July 2010 through April 2012.

processed an average of 12 percent more watchlist actions per day, going from 2.06 to 2.3 actions per staff member per day.

**EXHIBIT 3-7
TREX Staffing and Workload Data**

	TREX Actual Staffing Levels ⁸⁹	Total Watchlist Actions Processed ⁹⁰	Watchlist Actions Per Staff Per Day ⁹¹
Average – OIG May 2009 Audit	13.3	1,723	2.06
1 st Quarter FY 2011	12	1,742	2.3
Change in Percent	-9.77%	1.10%	12.06% ⁹²

Source: OIG analysis of TREX staffing and workload data

We believe that redundant procedures have hampered TREX’s ability to process watchlist actions more timely. For example, during the first quarter of FY 2011, TREX analysts maintained separate manual spreadsheets to track the key information associated with watchlist packages, including the dates the package was received, assigned to a TREX analyst for processing, submitted to the lead analyst for review, and submitted to NCTC or TSC for inclusion on the watchlist. TREX also maintained an additional internal log in which analysts re-entered most of the same information contained in the tracking spreadsheets.

According to a TREX official, they maintained the tracking spreadsheets to monitor workload and workflow. The TREX official said they re-entered the information in the internal log to more formally document the actions taken regarding watchlist packages. The internal log was also available to a limited number of other FBI units that may have needed to monitor the watchlist activity related to specific investigations.

We spoke with TREX officials who acknowledged that the two processes for tracking watchlist actions were redundant. The officials said that they believed the new KST Database would help to eliminate the need to retain multiple spreadsheets because the database now maintains an audit trail of most actions taken with

⁸⁹ According to TREX, the actual staffing levels reflect only those persons who actually processed work. They do not reflect supervisors, staff serving a short-term temporary duty assignment, or those persons on extended leave, e.g., maternity or bereavement.

⁹⁰ Total watchlist actions processed includes workload related to nominations, modifications, and removals. We did not perform any testing of the FBI’s processing of modifications to watchlist records. Because some TREX staff process these modifications, we include the workload and staffing figures.

⁹¹ The number of watchlist actions per day includes watchlist nominations, modifications, and removals. We assumed 21 business days per month to calculate the number of watchlist actions processed per day per staff.

⁹² The difference is attributed to rounding.

respect to a watchlist package. We suggested to the TREX official that they consider formally documenting in the KST Database all steps taken regarding watchlist packages. In addition, we suggested that TREX provide limited access to the other FBI units that needed to monitor the watchlist activity. As a result of our current audit, in August 2011 TREX eliminated the requirement for its analysts to enter watchlist action information in the internal log.

Because the FBI transferred responsibility for the TREX mission and personnel from the CTD's National Threat Center Section to the TSC in March 2012, we discussed the results of our review of TREX with the TSC Director. The TSC Director said that he believed that TREX would benefit from its association with the TSC because the TSC has experienced and dealt with many of the same issues identified as weaknesses for TREX. According to the TSC Director, the TSC has developed a system by which it prioritizes its data searches to more quickly identify the information most vital to watchlisting. The TSC Director indicated that this system could be adapted for TREX use and potentially reduce TREX's watchlist nomination processing time. In addition, the TSC has developed a metrics process by which it assesses the efficiency of its processes, as well as its employee performance. Using this metrics system, the TSC should be able to identify areas for TREX to improve its processes and to identify TREX employees who may need additional training or development.

As a result of the recent reorganization of the TSC and TREX, we believe that the FBI should re-evaluate the overall nomination process and timeframes to determine the most effective and efficient methods, including through the use of technology, to ensure that subjects are reliably nominated to the watchlist in the most expeditious manner practicable.

Expedited Nominations

When the TSC was established, the Watchlist Community permitted its members to submit expedited nominations directly to the TSC after normal business hours. The guidance requires that nominators contact a tactical operations specialist at the TSC Tactical Operations Center to complete an expedited nomination form. The TSC then enters the individual into the TSDB. The nominator is required to submit a nomination using the standard nomination processes. The standard nomination should include appropriate follow-up documentation that indicates that the individual meets all of the criteria for watchlisting. According to the formal procedure statement for these nominations, once the TSC receives the standard nomination, it enters the standard nomination into the TSDB and deletes from the TSDB the record created from the expedited nomination.

To evaluate the TSC's processing of these expedited requests, we asked for a listing of all expedited watchlist nominations during the period from October 2009 through May 2011. In response to our request, the TSC conducted its own internal review of expedited nominations and reported that it had identified 46 persons that were nominated to the TSDB using the expedited process. The TSC also reported

that for at least 20 persons it failed to remove the expedited nomination once it received the standard nomination from the nominating agency. Further, when the nominating agency submitted the removal action for 3 of the 20 persons, the TSC deleted the standard nomination but failed to delete the expedited nomination. As a result, these three persons were erroneously retained on the watchlist for 2, 4, and 8 months, respectively.

When we requested the actual listing of individual expedited nominations reviewed by the TSC, they provided a listing of approximately 140 nominations processed from October 2009 through June 2011 rather than the 46 persons identified above. According to TSC officials, they did not have a formal process for tracking expedited nominations. As a result, they were unable to readily identify which watchlist nominations had been submitted using the expedited nomination process. In addition, the TSC officials said that their internal process for ensuring that expedited nominations were deleted from the TSDB was lax. As a result of our review, the TSC officials said that they were implementing processes to ensure that expedited nominations were appropriately tracked and removed from the TSDB. The TSC said that they implemented a new version of the TSDB in November 2011 that enables them to identify or "tag" nominations that were submitted using the expedited process and to more readily identify these records to help ensure that the initial record is removed when the standard nomination was submitted. We recommend that the FBI review its existing guidance and procedures to ensure that they address the new functionality within the TSDB for identifying expedited nominations.

Watchlist Removal Policies

Similar to the nomination process, when closing either a preliminary or a full investigation, the responsible case agent prepares an electronic communication that is submitted for supervisory approval. Once the field division supervisor approves the closing of the case, the electronic communication is uploaded into the FBI's automated case management system.

At the time of our last audit, FBI policy permitted the closure of international and domestic *preliminary* investigations by the field division without FBI headquarters concurrence.⁹³ However, FBI headquarters personnel approval was required for the closing of all *full* terrorism investigations.⁹⁴ This

⁹³ As discussed in the Introduction, the FBI is permitted to open two types of terrorism investigations referred to as preliminary or full investigations. In general, preliminary investigations are authorized when information or an allegation indicates that a threat to national security may exist. Full investigations are authorized when there are specific and articulable facts giving reason to believe that a threat to national security may exist. Throughout this section, we use italics to distinguish between the treatments of the two types of investigations.

⁹⁴ For full international terrorism investigations, the field division was required to obtain concurrence for the proposed case closure from the CTD's International Terrorism Operations Section (ITOS). For full domestic terrorism investigations, concurrence had to be obtained from the CTD's Domestic Terrorism Operations Unit (DTOU), the unit responsible for conducting program management of domestic terrorism cases for the FBI at a national level.

headquarters review was intended to ensure that all appropriate investigative techniques had been exhausted regarding the subject and no additional information was available in classified databases that would make it appropriate to keep the case open. For both international and domestic terrorism investigations with subjects on the watchlist, once the case agent obtained the requisite field division or headquarters approval to close the case, the case agent was required to submit to TREX the watchlist record removal form with the closing electronic communication.

During our previous audit, we found that some confusion existed among FBI personnel about when to submit the watchlist record removal package. As a result, some subjects were not removed from the watchlist in a timely manner while other known or suspected terrorists may have been removed from the watchlist in error. To address the confusion, the FBI modified its watchlist guidance for the removal of watchlisted subjects. In our current audit, we reviewed the FBI's policies related to the removal of watchlisted subjects and found that some inconsistencies existed between the FBI's watchlisting guidance and its Domestic Investigations and Operations Guide (DIOG).⁹⁵

According to the FBI's internal watchlist guidance issued in December 2010, the closing electronic notification for full investigations should contain an "action lead" or an electronic prompt that notifies FBI headquarters of case closure, as well as an action lead to TREX to remove the subject from the watchlist if FBI headquarters does not oppose the closing within 30 days. At the same time the field division submits the notification of case closure to headquarters, it is required to submit the watchlist removal request to TREX. The policy also requires that TREX monitor the removal action and then remove the subject from the watchlist if FBI headquarters does not oppose the closing within 30 days.

When we discussed the watchlist guidance with TREX officials, they said that in February 2010, the CTD had eliminated the requirement that the field divisions notify FBI headquarters of their intent to close most full investigations. According to an e-mail from the then Assistant Director for the CTD to various CTD personnel, dated February 17, 2010, the Assistant Director agreed with the FBI's Office of the General Counsel to eliminate the requirement for field divisions to obtain headquarters approval before closing a case so that CTD policy would be consistent with the DIOG. Although the field divisions would still need to obtain headquarters approval prior to closing some investigations, they would not need to obtain approval for the majority of terrorism investigations.⁹⁶ More

⁹⁵ The FBI's DIOG is the controlling policy regarding FBI investigations. It helps to standardize FBI policy so that criminal, national security, and foreign intelligence investigations are investigated in a consistent manner. Each FBI headquarters operational division has its own policy implementation guide that supplements the DIOG. On October 15, 2011, the FBI released an updated version of the DIOG, which superseded the prior DIOG that had been in effect since December 16, 2008.

⁹⁶ Some full investigations focus on groups or organizations that are involved in national security threats to the public. Field divisions are still required to obtain FBI headquarters' approval prior to closing this type of investigation.

importantly for purposes of this audit, TREX is not required to monitor whether headquarters has approved case closure prior to processing the watchlist removal request.

FBI officials could not explain why the watchlist guidance issued in December 2010 did not reflect the prior elimination of the requirement for field divisions to obtain headquarters approval before closing most full terrorism investigations. When we informed the FBI of the inconsistencies at the time of our field work on this audit, they said that they were now aware of the inconsistencies within the FBI's policies. In March 2012, the FBI implemented a new policy that now provides consistent guidance regarding the closure of terrorism investigations and watchlist removals.

OIG Analysis of FBI Watchlist Removal Actions

To assess the accuracy of the FBI's metrics and compliance process and whether the FBI's new processes helped to ensure that subjects of FBI investigations were removed from the consolidated terrorist watchlist in compliance with FBI policy and in a timely fashion, we reviewed FBI TREX Metrics Team and corresponding watchlist data. We reviewed such removal data for 129 subjects of preliminary and full domestic or international terrorism cases closed during the first quarter of FY 2011 in four FBI field divisions: Chicago, Los Angeles, Miami, and Minneapolis.

In addition, to assess the impact of the FBI's new KST Database, we reviewed removal data for watchlist actions processed using the new database. We reviewed removal data for 104 subjects of preliminary and full domestic or international terrorism cases closed during the fourth quarter of FY 2011 emanating from the four FBI field divisions in our sample.

Subjects Not Removed from the Watchlist

We found that subjects of closed investigations were generally removed from the watchlist when the case was closed. Compared to our previous audit in which 8 percent of the subjects of the cases we reviewed were not removed from the watchlist when the case was closed, we did not identify any instances in which the subject of a case closed during the first quarter of FY 2011 was not removed from the watchlist.⁹⁷ However, we were told that it can be difficult to ensure that all subjects of an investigation are removed from the watchlist when the case closes.

⁹⁷ During our review in May 2009, we tested the watchlist removals for 85 closed terrorism investigations initiated by the Los Angeles, Miami, and Minneapolis field divisions in FYs 2006, 2007, and the first half of FY 2008.

At the time of our review, FBI policy permitted the inclusion of multiple subjects in one international terrorism investigation.⁹⁸ The Metrics Team Leader said that in some instances case agents do not maintain a complete list of all of the individuals related to a particular case that have been nominated to the watchlist. As a result, when cases close, case agents are not always able to identify all of the individuals that had been nominated to the watchlist. In one instance, the Metrics Team Leader said a case agent had a terrorism investigation with a total of 186 main subjects and "references."⁹⁹ Because the case agent did not retain a complete list of all watchlisted individuals, the case agent was unable to submit the necessary paperwork to remove them all from the watchlist. The Metrics Team Leader worked with the case agent to identify and remove all of the watchlisted individuals associated with this case. The removal process required that every main file and reference be checked in the TSDB to determine which individuals were in the TSDB. The FBI identified that 10 of the main subjects had been watchlisted. The process was very time consuming and individuals were retained on the watchlist longer than was necessary. To help ensure watchlisting and other requirements are met, the FBI issued new policy in July 2012 that requires each terrorism investigation to have only one subject.

According to the Metrics Team Leader, the process of determining whether a case subject is on the watchlist can be complicated because the FBI's current case management system does not readily track whether an individual has been submitted for watchlisting or identify the subject's watchlist status. To determine whether a case subject is watchlisted, the case agent must search through the documents in the automated case file. If the watchlisting documents have not been included in the automated case file, the case agent must search all of the documents contained in the paper case file. The process of determining the watchlist status of a subject can be further complicated when cases are transferred between multiple case agents or field divisions.¹⁰⁰

It is also difficult for the FBI to easily compile a comprehensive list of all individuals currently watchlisted by the FBI. To obtain such an inventory, for instance to conduct quality assurance projects, TRES personnel said that they rely on the TSC to provide a listing. We asked the TSC how it, in turn, determines the

⁹⁸ The authority to conduct multiple-subject investigations was previously not allowed in domestic terrorism investigations.

⁹⁹ According to the FBI, there were [REDACTED] main subjects in the investigation. The "references" included names, aliases, [REDACTED].

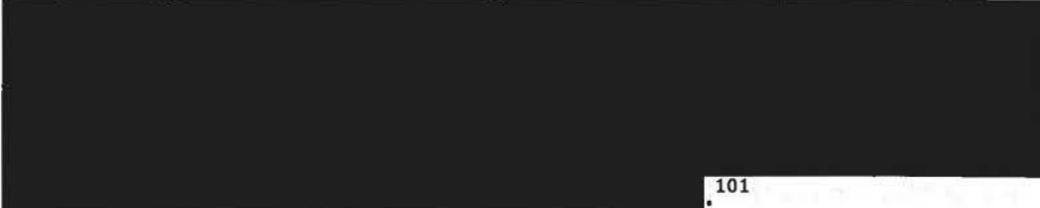
¹⁰⁰ FBI policy requires the field division investigating a subject to transfer the case to a new field division when a subject moves to a new field division's geographic area of responsibility. In these instances, the transferring field division is required to notify the receiving field division of the subject's relocation, request the receiving field division open a case, and submit a watchlist action to modify the subject's watchlist record to reflect the transfer. [REDACTED]

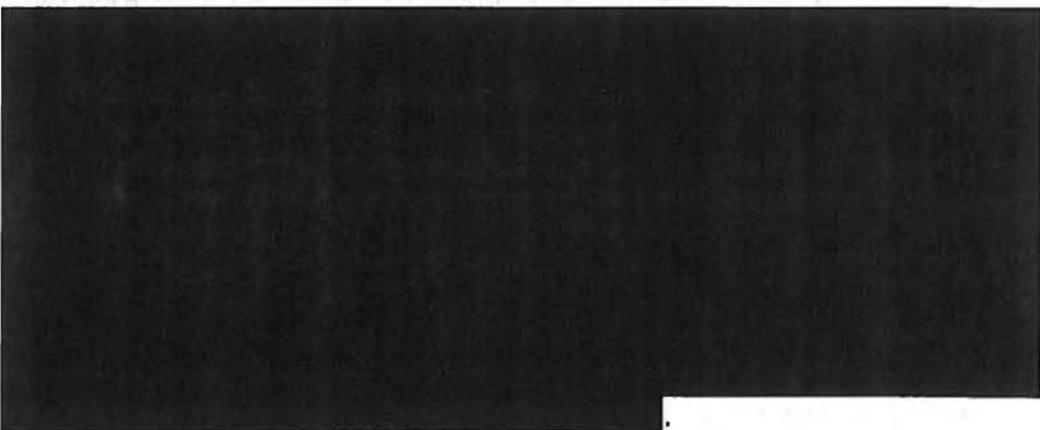
[REDACTED] to TRES within 10 business days of receipt of notice from the receiving field division.

universe of records in the TSDB for which the FBI is a source of the watchlist nomination. According to the TSC, it cannot generate a complete listing of TSDB records for which the FBI is a source of the watchlist nomination without reviewing the TIDE records for each subject to identify which agency provided the underlying source information and request for watchlisting.

The TSC said that to generate a reasonably complete listing of TSDB records for which the FBI is a source of the watchlist nomination, it relies on several factors that either indicate or confirm an investigative interest on the part of the FBI, including the following:

- The person is a domestic terrorist nomination. Because all domestic terrorist nominations are received directly from the FBI, the FBI is considered the nominating agency.

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We believe that the FBI should be able to independently generate a complete listing of the individuals who are eligible for inclusion on the watchlist, those for whom it has submitted watchlist nominations, as well as whether the nominations are active or removed. By relying on the TSC to determine which watchlist records are sourced to the FBI, the FBI is unable to reconcile the universe of subjects of its open cases who should be nominated to the watchlist with those individuals who are actually watchlisted. Further, the FBI is unable to ensure that all individuals that were nominated to the watchlist are appropriately removed when cases are closed.

101 

We discussed with FBI officials these weaknesses with the FBI's processing of watchlist removals. These officials acknowledged these weaknesses, but said that they believed the metrics and compliance process and the new KST Database should address many of the weaknesses we have identified during our audits. However, we believe that further improvements could remove even more risk that individuals would be watchlisted inappropriately.

Although the FBI's new KST Database provides the FBI with the ability to track watchlist actions that have been submitted and processed, it does not provide a vital link between the FBI's case management system and the TSDB to ensure that all subjects of FBI investigations are appropriately watchlisted through all phases of an FBI investigation. As a result, the FBI relies on largely manual procedures, such as the metrics and compliance process.

We believe that the FBI needs to develop the ability to independently generate a complete listing of subjects of terrorism investigations who are eligible for inclusion on the watchlist, those for whom it has submitted a watchlist nomination, and whether the nominations are active or removed. During the exit conference, the FBI reported that there have been preliminary discussions regarding a technical solution between the FBI, TSC, and the design team for the FBI's new case management system, Sentinel.

Timeliness of Watchlist Removals

At the time of our previous audit, there was no timeliness requirement for field divisions to provide watchlist record removal paperwork to TREX. As shown in Exhibit 3-8, the current FBI policy requires field divisions to submit watchlist removal packages for both preliminary and full terrorism investigations to TREX within 10 business days of the date the case is closed in the FBI's case management system.

Since our last audit, the FBI increased the amount of time allocated to TREX for processing watchlist removals. Previously, TREX was required to complete its processing of watchlist removals within 24 hours of receiving a complete package from the field. Under the new guidelines, TREX now has 10 business days to complete its processing of a watchlist removal after receiving a complete removal package from the field.

Exhibit 3-8
FBI Watchlisting Compliance Timeline - Removals¹⁰²

	Field Division	TREX
Prior	No timeliness requirement.	24 hours from receipt of complete package from field division.
New	10 business days from date case is closed in case management system.	10 business days from date of receipt of complete package from field division.

Source: Federal Bureau of Investigation

Based on our review of TREX Metrics Team and watchlist removal data, we found that overall the FBI has significantly improved its compliance with the timeliness standards for removing subjects from the watchlist.¹⁰³ As shown in Exhibit 3-9, the FBI considerably reduced the number of untimely watchlist removals from 72 percent as identified in our May 2009 audit down to 15 percent untimely during the fourth quarter of FY 2011.¹⁰⁴ Further, the FBI has reduced the average number of days that elapse between case closure and watchlist removal from 60 days to 9 days. Similarly, the FBI has reduced the median number of days that elapse from 26 days to 9 days. Moreover, the FBI reduced the maximum number of days that a subject remained on the watchlist after the investigation was closed from 589 days to 21 days.

¹⁰² When the FBI re-issued its watchlist policy on December 21, 2010, it did not change its compliance timeline as outlined in the December 2009 watchlist policy.

¹⁰³ We identified some data entry errors in the Metrics Team calculations. However, the errors were minor and did not significantly impact the Metrics Team's results.

¹⁰⁴ For purposes of our testing, we used the current standard for submitting and processing watchlist nominations within 10 business days each. As with nominations, we considered a subject to be untimely removed if either the field division or TREX exceeded its standard processing time. For example, if a field division submitted a removal within 12 business days and TREX processed the removal within 1 working day, we considered such a removal untimely.

EXHIBIT 3-9
Breakdown of Untimely Watchlist Removals¹⁰⁵

	Number Tested	Number Untimely	Percent Untimely	Minimum in Days	Maximum in Days	Average in Days	Median in Days
FY 2006 through 1st half of FY 2008 ¹⁰⁶	85	61	72%	6	589	60	26
1 st Quarter FY 2011 ¹⁰⁷	82	8	10%	1	41	18	14
4 th Quarter FY 2011 ¹⁰⁸	66	10	15%	1	21	9	9

Source: OIG analysis of FBI data

As shown in Exhibit 3-10, the field divisions in our sample submitted 93 percent of watchlist removals within the 10-business day standard following closing the case in the automated case management system. However, the timeliness with which the field divisions submitted watchlist removals declined following the implementation of the KST Database. Again, we attribute some of the untimely removals to normal reductions in productivity when new systems are implemented.

¹⁰⁵ To examine the 10-business day requirement for field divisions, we used the date the case was closed in the FBI's case management system and compared it to the date TREX received a complete removal package from the field division. To examine the 10-business day requirement for TREX, we considered the date the package was received and the date TREX forwarded the removal to the NCTC branch staffed by FBI personnel.

¹⁰⁶ During our review in May 2009, we evaluated 85 cases that were closed by the field divisions located in Los Angeles, Miami, and Minneapolis for FYs 2006, 2007, and the first half of FY 2008.

¹⁰⁷ There were 129 subjects of cases closed during the first quarter of FY 2011. During our review of the watchlist removal data for the subjects in our sample cases, we identified 47 subjects of terrorism investigations for whom the FBI was not required to submit a removal action because the subject was either appropriately not watchlisted previously or was justifiably retained on the watchlist. Therefore, we excluded these 47 subjects from our testing for timeliness.

¹⁰⁸ There were 104 subjects of cases closed during the fourth quarter of FY 2011. During our review of the watchlist removal data for the subjects in our sample cases, we identified 38 subjects of terrorism investigations for whom the field division was not required to submit a removal action because the subject was either appropriately not watchlisted previously, was justifiably retained on the watchlist, or had been previously removed from the watchlist. Therefore, we excluded these 38 subjects from our testing for timeliness.

EXHIBIT 3-10
Percentage of Watchlist Removals Submitted by FBI Field Divisions to TREX

	1 st Quarter FY 11 Before KST Database Implementation	4 th Quarter FY 11 After KST Database Implementation
1 day or less	85%	80%
2 days or less	90%	80%
3 days or less	90%	80%
4 days or less	90%	80%
5 days or less	90%	80%
10 days or less	93%	81%
>10 days	7%	19%

Source: OIG analysis of FBI data

As shown in Exhibit 3-11, during the first quarter of FY 2011, TREX processed 98 percent of the watchlist nomination packages within 10 business days of receipt from the field division, and that increased to 100 percent in the fourth quarter of FY 2011 after implementation of the KST Database.

EXHIBIT 3-11
Percentage of Watchlist Removals Processed by TREX

	1 st Quarter FY 11 Before KST Database Implementation	4 th Quarter FY 11 After KST Database Implementation
1 day or less	4%	2%
2 days or less	9%	9%
3 days or less	30%	36%
4 days or less	41%	59%
5 days or less	57%	77%
6 days or less	70%	85%
7 days or less	82%	89%
8 days or less	93%	91%
9 days or less	95%	98%
10 days or less	98%	100%
>10 days	2%	0%

Source: OIG analysis of FBI data

Clearly, the FBI has improved its overall compliance with existing timeframes. However, we believe that the timeliness guidelines for submitting and processing watchlist removals could be reduced.

The current FBI policy requires field divisions to submit watchlist removal packages for both preliminary and full terrorism investigations to TREX within 10 business days after the date the case is administratively closed in the FBI's case management system. However, the date the case is administratively closed in the

case management system does not necessarily reflect the date that the field division completed its investigation of the subject.

As previously discussed, when closing either a preliminary or a full investigation the responsible case agent prepares an electronic communication that is submitted for supervisory approval of case closure. In general, the date that the field division supervisor approves case closure reflects the actual date that the FBI determined that the subject no longer meets the watchlisting criteria. However, other administrative functions need to be completed prior to closing the case in the case management system, including uploading the closing electronic communication.

During our review of cases closed during the first quarter of FY 2011, we found that the FBI submitted nearly 70 percent of the watchlist removal packages prior to the date the case was officially closed in the automated case management system. The FBI's December 2010 policy on watchlist removals identified submitting removal requests in this manner as a best practice.

We acknowledge that selecting the date the case was closed in the automated case management system is a logical metric. However, because all investigative and most administrative actions are completed when the supervisor approves case closure, we believe that the timeframes for submission of the removal by the field division and the processing by TREX could be significantly reduced.

Conclusion

Our review found that generally the improvements implemented by the FBI as a result of our previous audits helped to ensure that the watchlist is more complete, accurate, and current. Despite these improvements, we found weaknesses with the FBI's policy and procedures that we believe unduly restricted the amount of terrorism information shared with NCTC and impaired the FBI's ability to efficiently manage its watchlist nominations.

We found that the FBI's December 2010 watchlist policy provided for a more restrictive set of criteria for inclusion in the TSDB and TIDE than generally required by the Watchlist Community. Because FBI policy indicated that, in general, [REDACTED] are required for nominations to the watchlist, FBI case agents were not submitting some terrorism information to NCTC and the TSC for inclusion in TIDE and the TSDB. As a result, information about known or suspected terrorists may not have been available to the Watchlist Community for analysis and possible watchlisting. Although the FBI's March 2012 policy now reflects the minimum identifying criteria set forth in the July 2010 Watchlisting Guidance, the policy still provides inconsistent directions to FBI personnel. This inconsistency could lead FBI personnel to believe incorrectly that [REDACTED]

We also found that the FBI's metrics and compliance process helps to ensure that subjects who are fully identified at the opening of the investigation are nominated to the watchlist when the investigation is first opened. However, the process does not work as well when, at the opening of a case, the field division does not have adequate biographical data for watchlisting and this information becomes available later. As a result, some subjects of FBI investigations are not nominated to the watchlist when the investigation is open.

Further, we found that the FBI's metrics and compliance process helps to ensure that subjects of closed investigations are removed from the watchlist when the investigation is closed. However, the process of ensuring all watchlisted individuals are removed from the watchlist can be complicated because the FBI's case management system does not readily track whether an individual has been submitted for watchlisting or identify the subject's watchlist status. As a result, it can be difficult to ensure that all watchlisted individuals related to an investigation have been removed from the watchlist when the investigation is closed.

Because the FBI's case management system does not track whether an individual has been submitted for watchlisting or the watchlist status, we also found that the FBI is unable to independently generate a complete listing of the individuals who are eligible for inclusion on the watchlist, those for whom it has submitted a watchlist nomination, as well as whether the nominations are active or removed. Although the TSC maintains some of the information needed to provide a listing of watchlist records sourced to the FBI, the TSC's information does not provide an accurate and complete listing of watchlist records. Because the FBI is unable to generate or obtain a complete listing, it is unable to reconcile the universe of subjects of its open cases who should be nominated to the watchlist with those individuals who are actually watchlisted. Further, the FBI is unable to ensure that all individuals who were nominated to the watchlist are appropriately removed when the case is closed.

We also found that the FBI has improved the timeliness with which it processes watchlist nominations and removals. However, we also found that redundant and inefficient processes had hampered the FBI's ability to process watchlist actions in a more timely manner. During the period of our review, the FBI implemented a new database that helped to eliminate some of the inefficiencies we identified. Nevertheless, we found that the FBI could further refine its policies by tightening its requirements for case agents to submit nomination and removal actions, and for TREX to process them.

Because the consolidated watchlist helps law enforcement to detect and apprehend known or suspected terrorists, subjects of FBI terrorism investigations should be nominated to the watchlist as quickly as possible. We acknowledge that the FBI has processes by which it nominates subjects to the watchlist more quickly when circumstances require expedited processing, such as when a person is believed to present an imminent threat. However, determining which subjects pose an immediate threat may not always be easily predicted.

As with watchlist nominations, it is essential that the FBI submit and process watchlist removals as quickly as possible. When an individual is retained on the terrorist watchlist after the federal government no longer suspects a nexus to terrorism, there is an increased risk that individuals will be unnecessarily delayed during travel or other screening situations. The obsolete records can also make it more difficult to accurately identify positive matches to known or suspected terrorists because of similarities in certain peoples' identifying information, consuming valuable resources unnecessarily.

We believe that the FBI's initiatives have been effective in the short term in improving the completeness and timeliness of the watchlist. However, we continue to find subjects of FBI investigations who were not nominated to or removed from the watchlist in a timely manner or as expediently as possible.

Recommendations

We recommend that the FBI:

3. Review the subjects of terrorism investigations opened under its previous policy guidelines to determine whether the FBI possesses sufficient biographical and derogatory information to support forwarding the information to NCTC for review and potential watchlisting.
4. Re-assess its timeliness standards for field division submission of watchlist nominations, including the possibility of mandating the existing best practice of submitting watchlist nominations at the same time as the opening communication.
5. Re-evaluate the overall nomination process and timeframes to determine the most effective and efficient methods, including through the use of technology, to ensure that subjects are reliably nominated to the watchlist in a timely manner. For example, the FBI should explore technological solutions within its case management system that would automatically trigger the generation of a watchlist nomination when a case agent officially opens a case and has the requisite identifying information for nomination.
6. Review all of its watchlist guidance and procedures to ensure that they are accurate, complete, and consistent, including those applicable to the new functionality within the TSDB for identifying expedited nominations and the requirements for closure of terrorism investigations.
7. Develop the ability to independently generate a complete listing of FBI terrorism subjects who are eligible for inclusion on the watchlist, those for whom it has submitted a watchlist nomination, and whether the nominations are active or removed.

8. Re-evaluate the timeframes for submission and processing of removal packages by the field divisions and TREX.

III. NON-INVESTIGATIVE SUBJECTS

During our previous audits, we identified weaknesses in the FBI's handling of watchlist records related to individuals who are not under investigation by the FBI, referred to as non-investigative subjects. The FBI thereafter issued new guidance that more clearly defined its policy and processes for including individuals on the watchlist for whom the FBI does not have an open investigation. In this audit, we found that, even with the new guidance, the FBI used multiple processes to submit requests for non-investigative subject watchlisting. As a result, the FBI was not timely in submitting watchlist actions for non-investigative subjects. In addition, for the non-investigative subjects who were watchlisted, we found that the FBI had not maintained adequate records necessary to readily provide an accurate accounting of the actions that were taken regarding such nominations. As a result of this review, the FBI implemented policy and procedures to help to ensure that its processing of non-investigative subject watchlist nominations is more complete, consistent, accurate, and timely. We believe that these improvements are a positive step. However, we identified continued weaknesses in the database used by the FBI to submit, monitor, and track non-investigative subject nominations.

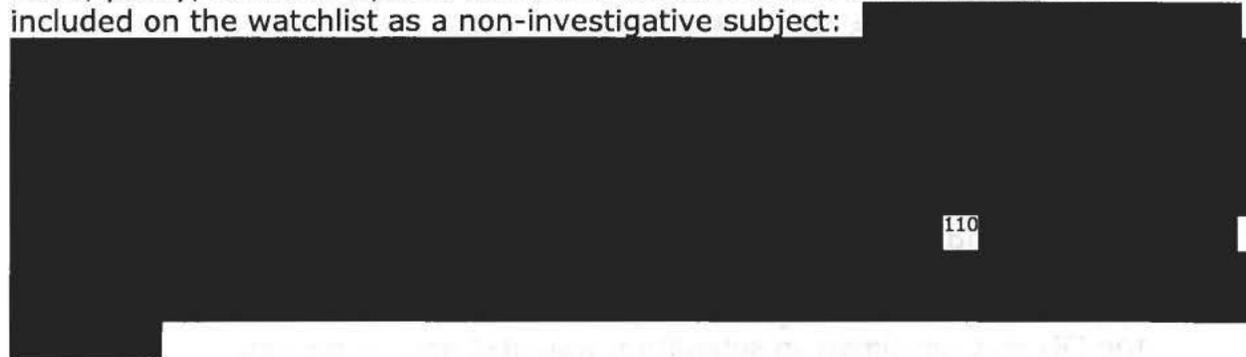
Overview of the Non-Investigative Subject Watchlist Process

In limited circumstances, FBI policy allows for the inclusion on the watchlist of individuals for whom the FBI does not have an open investigation. The individuals are referred to as non-investigative subjects.

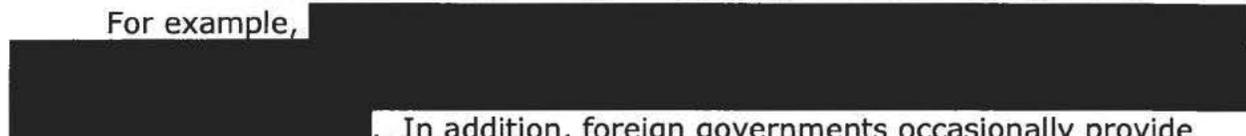
During our prior audits, we found that because these individuals are not subjects of ongoing FBI investigations, the resulting watchlist records were not subjected to the FBI's established nomination and removal processes. As a result, numerous watchlist records for these individuals were not subjected to rigorous initial review, periodically confirmed, or examined for potential removal. We recommended that the FBI review its policies and practices for non-investigative subjects to ensure the practices were covered by FBI policy and that the resulting watchlist nominations were reviewed and existing records were modified and removed when appropriate. In response to our recommendations, the FBI more clearly defined its policy and processes regarding the inclusion on the watchlist individuals for whom the FBI does not have an open investigation.

FBI policy requires that any FBI recipient of information regarding an individual who meets the criteria for inclusion on the watchlist as a non-

investigative subject must submit the person for watchlisting.¹⁰⁹ In its December 7, 2009, policy, the FBI required that three criteria be met for an individual to be included on the watchlist as a non-investigative subject:



For example,



. In addition, foreign governments occasionally provide information through the FBI's Legal Attaches (LEGAT) regarding individuals who are under investigation by the foreign government for a crime related to terrorism, or who are reasonably suspected of engaging in terrorism or terrorist activity.¹¹¹ Further, other DOJ components, such as the Drug Enforcement Administration, may identify information regarding known or suspected terrorists, and then forward it to the FBI.¹¹² All of these examples could result in a non-investigative subject nomination by the FBI. As of March 2, 2012, the FBI reported that the watchlist included 955 non-investigative subjects that it had nominated.

To nominate a non-investigative subject for possible watchlisting, the FBI personnel submit to TREX an electronic communication that contains information indicating that the individual should be included on the watchlist as a non-investigative subject.¹¹³ In addition, the electronic communication should contain an "action lead" that requests that TREX assume responsibility for

¹⁰⁹ When FBI personnel are deployed with the Department of Defense (DOD), DOD is responsible for nominating terrorism subjects of operations conducted under DOD authority.

¹¹⁰ Executive Order 12333 on United States Intelligence Activities (E.O. 12333) states that a U.S. Person is a United States citizen, an alien known by the intelligence agency and considered to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

¹¹¹ Foreign governments also may provide information through formal or established information sharing relationships between the United States and the foreign country. If foreign government information is provided through the FBI's Criminal Justice Information Services (CJIS), the FBI provides this information to the U.S. Intelligence Community in compliance with HSPD-6. The FBI does not make nominations based on this type of information.

¹¹² In October 2008, DOJ designated the FBI as the central watchlist nominator for all DOJ components.

¹¹³ The electronic communication is uploaded to the administrative control file used by TREX to manage non-investigative subject actions.

nominating the subject to the watchlist and maintaining the watchlist record. Within TREX, this work is handled by the Non-Investigative Subject (NIS) Team. The NIS Team also receives requests for non-investigative watchlisting from other TREX teams, including the Modification and Removal Team and the Metrics Team.¹¹⁴

Based on the information provided, the NIS Team is responsible for determining whether the subject is eligible for inclusion on the watchlist as a non-investigative subject. When the NIS analyst determines that an individual meets the criteria for watchlisting, the analyst prepares and submits the appropriate watchlist package to NCTC or TSC. For example, for individuals that have not previously been watchlisted, the NIS analyst prepares a watchlist nomination form. For subjects of closed terrorism investigations who are to be retained on the watchlist, the analyst submits a watchlist modification package to transfer responsibility for the watchlist record from the case agent to the NIS Team. If the NIS Team determines that the subject of the closed investigation does not meet the criteria for continued inclusion on the watchlist, the analyst submits a package to remove the subject from the watchlist. According to NIS analysts, they notify the requesting case agent by electronic communication of the NIS Team's determination regarding whether the subject's watchlist record would be retained on the watchlist, removed from the watchlist, or rejected if not already watchlisted.

If the individual has already been watchlisted at the request of another agency, [REDACTED]

NIS analysts are responsible for verifying and validating most non-investigative subject watchlist records annually to ensure that the information remains accurate and that the individual continues to pose a national security threat related to terrorism. Because these individuals are not the subject of pending investigations, they are not included in the FBI's standard 90-day investigative file reviews and otherwise would not be reviewed for the appropriateness of watchlisting.

If the TREX NIS Team determines that the non-investigative subject no longer meets the reasonable suspicion standard, they are responsible for ensuring that the record is removed from the watchlist and notifying the originating field division of the removal. FBI policy requires the NIS Team to track and maintain a list of all non-investigative subjects the FBI has nominated to the watchlist.

If the watchlisted non-investigative subject is encountered by screening personnel, the FBI's Terrorist Screening Operations Unit will coordinate the response and provide details of the encounter to the NIS Team for additional

¹¹⁴ The Modification and Removal Team processes requests to modify information about watchlisted subjects or to remove subjects from the watchlist. As discussed in Finding II, the Metrics Team helps to identify subjects of closed investigations that have not been removed from the watchlist. On occasion, these teams identify subjects of closed investigations who should be considered for NIS watchlisting and also may find non-investigative subject work has been forwarded to them by mistake.

follow-up regarding the non-investigative subject's watchlist status. The NIS Team will review the encounter details to ensure the individual warrants continued watchlisting. If additional identifying information is obtained during the encounter, the NIS Team is responsible for ensuring the information is added to the watchlist record.

OIG Review of Non-Investigative Subject Watchlist Records

FBI policy requires NIS analysts to track and maintain a list of all non-investigative subjects the FBI has nominated to the watchlist. At the time of our audit, the TREX NIS Team used three separate methods to track the receipt of requests relating to watchlisting non-investigative subjects and the actions taken by the TREX NIS Team to process such requests.

First, TREX NIS analysts maintained a manual spreadsheet to track the key information associated with NIS watchlist requests, including the FBI case number and subject name. In addition, the spreadsheet contained key processing dates, such as the date the request was received, the date the action was submitted to NCTC or TSC for inclusion on or removal from the watchlist, and the date the case agent was notified of the NIS Team's determination. Second, TREX maintained an additional log in which the NIS analysts re-entered the same information contained in the tracking spreadsheet.¹¹⁵ Third, NIS analysts maintained a control file within the automated case management system that was used as, among other things, the official file for NIS requests from the field and the associated electronic communications from TREX to the requesting FBI staff members detailing TREX's decisions and actions taken on the requests.

To assess the FBI's non-investigative subject watchlist process, we obtained the electronic spreadsheet used by the TREX NIS Team to track non-investigative subject watchlist actions received by the NIS Team for the period of January 2009 to October 2010.¹¹⁶ During this period, the NIS Team received a total of 525 requests for non-investigative subject watchlisting. We selected a sample of 70 entries from the NIS tracking spreadsheet.¹¹⁷ In our review of the NIS process, we worked extensively with NIS Team analysts to obtain documentation from the FBI's electronic case management system, internal TREX logs, and correspondence between the NIS analysts and other FBI personnel. In addition, to verify whether

¹¹⁵ TREX maintained this internal log, which is also referenced earlier in this report, to document all actions regarding both investigative and non-investigative watchlist packages.

¹¹⁶ Although the NIS Team was established in February 2010, the NIS tracking spreadsheet contained entries indicating that it received requests for non-investigative subject watchlisting in early January 2010. Because they were processed by the NIS Team, we included these in our analysis.

¹¹⁷ Our judgmental sample included 49 requests for non-investigative subject watchlisting for cases that closed after the issuance of the FBI watchlist policy on December 7, 2009. In addition, our judgmental sample included 21 requests for non-investigative subject watchlisting for cases that closed prior to December 7, 2009. Because these 21 requests pertain to cases that closed prior to December 7, 2009, they are not subject to the new guidance. Therefore, we assessed these requests using the guidance that was in effect at the time the cases closed.

the watchlist actions requested by the NIS Team were appropriately reflected in the TSDB, we requested various reports from the TSC.

We analyzed the entirety of the FBI data to determine from whom the NIS Team received the request for non-investigative subject watchlisting, the determination the NIS Team made regarding each request, the timeliness of FBI non-investigative subject watchlisting actions, and whether the FBI maintained adequate documentation to support its determinations and actions. Finally, we assessed the FBI's policy regarding the annual review of non-investigative subject watchlist records.

Various Processes for Submitting Requests

As previously discussed, FBI policy requires that requests for non-investigative subject watchlisting be submitted to TREX via an electronic communication that is uploaded to a special file in the FBI's case management system used by the NIS Team to track NIS watchlist actions. Despite this requirement, FBI personnel submit requests for non-investigative subject watchlisting to the NIS Team in a variety of ways, including:

- uploading an electronic communication to the NIS file in the case management system with a lead to TREX;
- uploading an electronic communication to the investigative case file; and
- forwarding watchlist packages to other FBI entities, such as the TREX Metrics Team and Modifications and Removals Team.

During our review of 49 requests for non-investigative subject watchlisting team data for cases that closed after December 7, 2009, we found that only 15 requests or 31 percent were submitted using the NIS Team's file in the automated case management system. In 30 of the requests in our sample or 61 percent, the field divisions uploaded an electronic communication to their own investigative case file. In most of these 30 requests, the field divisions requested that TREX retain the subject on the watchlist. However, in some instances the field divisions requested other watchlist actions, including removal, modification, and possible watchlisting. In the remaining 4 instances, or 8 percent of requests in our sample, the request was either sent via e-mail directly to TREX or identified during quality assurance processes at TREX or the TSC. Because the requests were submitted to the NIS Team from other FBI units using multiple methods, NIS analysts said it could often be difficult to determine from whom they received the request, as well as what action has been requested.

We discussed this issue with TREX officials who agreed that the process for submitting non-investigative subject watchlist actions could be streamlined and improved and should be standardized. Because the FBI's policy already clearly instructed personnel on the proper method for submissions, the problem was not

that the procedure to be employed was not documented. We believed that the nomination process for non-investigative subjects needed to be simplified to make it more similar to standard nominations so that FBI personnel have one method by which they submit watchlist actions. Therefore, we recommended to TREX that all watchlist actions, including requests for non-investigative subject watchlisting, be submitted and processed through the KST Database.

In response to our recommendation, in September 2011 the FBI issued an electronic communication to FBI Counterterrorism Division staff announcing that the policy would be changed to require that all watchlist actions, including non-investigative subjects, be processed through the KST Database. According to the TSC this policy took effect in June 2012.

We believe that the use of the KST Database will help to eliminate the confusion and streamline the process for submitting non-investigative subject watchlist actions. However, as discussed in the following section we have significant concerns regarding the FBI's tracking of key information related to the non-investigative subject watchlist process.

Insufficient Record of Watchlist Actions

During our review of the FBI's non-investigative subject documents, we found that the FBI had not maintained the necessary records to readily provide an accurate accounting of the actions that were taken regarding the watchlisting of non-investigative subjects. We found that the spreadsheet used by the NIS Team was often incomplete and contained inconsistent and erroneous data. For example, in several instances the NIS Team Leader was unable to determine from whom the NIS Team received the request for non-investigative subject watchlist action. Although FBI policy requires that requests for non-investigative subject watchlisting be documented in an electronic communication, several spreadsheet entries merely reference an "e-mail." When we requested these e-mails, the NIS Team Leader struggled to find them and in several instances was unable to locate the e-mails. The NIS Team Leader indicated that the e-mails were inadvertently lost when her e-mail account was updated.

We also found that the information entered in the spreadsheet regarding the date a request was received was inconsistently defined. For example, in some instances the date received could represent the date the NIS Team received the request for non-investigative subject watchlisting. In other instances, the date received could represent the date that another TREX team, such as the Modification and Removals or Metrics teams, received the request. When the date received represented the date that another TREX team received the request, frequently the tracking spreadsheet did not indicate the date that the NIS Team received the request. Without this information, it is difficult to determine the amount of time it takes TREX to process a request for non-investigative subject watchlisting. Further, we found that the NIS Team did not track consistently two key pieces of information in its spreadsheet: the NIS Team's conclusion as to whether a subject

does or does not meet the criteria for non-investigative subject watchlisting, and the date that the analyst makes the determination.

We discussed these weaknesses with TREX officials who said that the KST Database should help them more accurately document their actions than they were recording them in the NIS Team spreadsheet and logs. However, the officials also said that the KST Database was not initially designed to process non-investigative subject watchlist actions. As a result, the system does not contain several key data fields that are necessary for adequately processing and tracking non-investigative subject watchlist actions.

For example, the KST Database is not designed to track the NIS Team's annual review of NIS watchlist records that are performed to regularly confirm the need for continued watchlisting of the individual. In addition, the KST Database does not permit the NIS Team to enter or track information related to its efforts to obtain more information from the case agent. For instance, when an NIS analyst determines that an individual does not meet the criteria for non-investigative subject watchlisting, the analyst is required to contact the case agent and allow 10 business days for the agent to provide additional information to support continued watchlisting. If the case agent does not provide the information within the 10 business days, the NIS analysts may proceed with removing the individual from the watchlist.

Because the KST Database does not track key information needed by the NIS Team, TREX officials said they intend to continue to manually enter the information into their tracking spreadsheet. At the time of our review, the TREX KST Database project coordinator stated that she was unaware that the KST Database did not provide all of the data fields needed by the NIS Team. The FBI, therefore, did not have any plans to modify the KST Database to include the data fields needed by the NIS Team. In correspondence received in December 2012, the FBI reported that it was in the process of adding a field to its KST Database to alert the analyst of the required annual review. In addition, the FBI reported that as of June 2012 it requires the NIS Team analysts to document in the electronic communication to the case agent their conclusion about whether a subject does or does not meet the criteria for non-investigative subject watchlisting.

We believe that the improvements made by the FBI as a result of our review should help to ensure that requests for non-investigative subject watchlisting are tracked and monitored. However, because the FBI is not actively investigating the individuals associated with these non-investigative subject watchlist records, there is an increased risk that these records will not receive the same level of review and oversight as those associated with active investigations.

With the inclusion of [REDACTED] eligible for non-investigative subject watchlisting, we believe it is particularly important that the FBI implement strong internal controls to ensure that it accurately monitors and tracks the actions it has taken regarding non-investigative subjects. Although the number of these individuals on the watchlist is relatively small, the number will only continue to

grow, as non-investigative subjects may remain on the watchlist for extended periods of time. Therefore, we recommend that the FBI develop the capability to maintain information related to its actions regarding requests for non-investigative subject watchlisting in one electronic database, such as the KST Database, and that the database be capable of tracking all necessary information.

Untimely Processing of Requests

According to FBI policy, if an FBI case agent wants to retain an individual on the watchlist after the investigation of that individual is closed, the agent is required to submit a request for non-investigative subject watchlisting to the TREX NIS Team within 10 business days of the closure of the case. As previously discussed, the NIS Team was unable to provide reliable and consistent data regarding from whom it received requests and the date it received them. As a result, we were unable to determine whether the field divisions submitted requests for non-investigative subject watchlisting in a timely manner.

At the time of our audit, the FBI did not have a timeliness requirement for the TREX NIS Team to process the request. However, we sought to assess the efficiency of TREX's processing of 49 requests for non-investigative subject watchlisting that closed after December 7, 2009. Because of the previously discussed issues we identified with the dates the NIS Team recorded that it received the requests, we were unable to rely on the data provided by TREX. Therefore, for the date that TREX received the request, we used the date of the closing electronic communication plus the full 10 business days allotted for the submission by the field division to the date of the closing electronic communication, unless the date recorded by the NIS Team was earlier.¹¹⁸

As shown in Exhibit 4-1, the NIS Team determined that the subjects of 30 of the 49 requests for non-investigative subject watchlisting in our sample should be retained on the watchlist as non-investigative subjects. Because most of these individuals were the subject of a closed terrorism investigation, they should have already been on the watchlist. Therefore, the NIS Team submitted watchlist modification forms to transfer responsibility for the watchlist record from the case agents to the NIS Team. As a result, there should be a relatively low risk that such subjects are not appropriately watchlisted.

However, during our review of these 30 requests, we identified 4 subjects of closed full investigations who had not been nominated to the watchlist while the investigation was open. Although the case agent indicated that these subjects were eligible for inclusion on the No Fly List, it took the NIS Team a median of 44 business days to submit the watchlist nomination package and nominate these subjects to the No Fly List.

¹¹⁸ In some instances, requests for non-investigative subject watchlisting were for individuals that were not the subject of an FBI investigation that was recently closed. In these cases, we used the date the electronic communication was uploaded into the automated case management system as the date received by TREX.

In addition, the NIS Team concluded that the subjects of 9 of the 49 requests we reviewed were already watchlisted by another government agency. We were told by the NIS Team Leader that in some instances the NIS analysts found that the information submitted to support a non-investigative subject watchlist nomination was no different from the information supporting the other government agency's existing nomination. In these instances where the individual was not the subject of an FBI investigation and the FBI did not possess additional information, the NIS Team did not submit the subject for watchlisting. At our audit close-out meeting and in subsequent communication, the TSC reported that as of December 2010, the NIS Team submits this information for inclusion in the TSDB.

We reviewed the NIS Team's processing of the nine other government agency nominations. It also took the NIS Team a median of 44 business days to make its determinations regarding these nine requests for non-investigative subject watchlisting. Eight of these were processed prior to December 2010, and the NIS team did not submit these previously nominated individuals to NCTC or the TSC for watchlisting.

The remaining other government agency nomination inquiry was submitted by a LEGAT, logged as received by the NIS Team in May 2010, and related to an individual for whom the FBI's information dated back to at least 2004. The NIS log indicates that the NIS Team responded that the case agent needed to submit additional information to support continued watchlisting. According to the NIS Team, no response was received from the LEGAT Office. The next entry in the NIS log is dated April 2011, and indicates that the NIS Team determined that the subject did not meet the criteria for inclusion on the watchlist as a non-investigative subject. The NIS Team submitted a watchlist removal form for this subject and was informed by NCTC that the existing watchlist record did not contain any FBI information to remove. TSC confirmed that as of June 2011, the subject had never been nominated to the watchlist by the FBI. The NIS Team's records do not indicate whether the NIS Team sought to determine why the case agent did not respond or what if any actions were taken between May 2010 and April 2011.

Finally, the NIS Team determined that the subjects of 8 of the 49 requests for non-investigative subject watchlisting in our sample should be removed from the watchlist. On average, it took TREX a median of 78 days to remove the subjects from the watchlist.

EXHIBIT 4-1
Breakdown of Non-Investigative Subject
Watchlist Requests

	Number	Percent of Total	Minimum in Days	Maximum in Days	Average in Days	Median in Days
Retained on Watchlist ¹¹⁹	30	61%	0	336	81	39
Watchlisted by Another Government Agency ¹²⁰	9	18%	43	222	79	44
Removed from Watchlist	8	16%	9	236	100	78
No Action ¹²¹	2	4%	44	189	117	117
Total¹²²	49	100%				

Source: OIG analysis of FBI data

We discussed these issues with TREX officials who acknowledged the untimeliness of the NIS Team actions. According to the *Counterterrorism Policy Implementation Guide* issued in March 2012, the timeframe for the NIS Team's processing of non-investigative subject watchlist nominations is 5 business days.

Similarly, we recommended to the FBI that it require field divisions to process within 24 hours of receipt the higher-priority No Fly List nominations for non-investigative subjects, and the FBI implemented this change with its March 2012 policy. This policy also states that TREX has 24 hours to process these non-investigative subject No Fly List requests.

¹¹⁹ For this category, most of the individuals were the subject of closed FBI investigations and had been nominated to the watchlist while the investigation was opened. However, as discussed above, we identified four subjects of full terrorism investigation who were not nominated to the watchlist while the FBI's investigation was opened. When these four subjects were nominated to the watchlist as non-investigative subjects after case closure, it took the NIS Team a median of 44 days to process and submit the nomination packages.

¹²⁰ Because these requests did not require the NIS team to submit a watchlist action to NCTC or the TSC, we used the date that the NIS team notified the case agent of its decision to assess the timeliness of TREX's processing. However, for one individual the NIS team did not notify the case agent of its decisions. Therefore, the total number of requests evaluated for timeliness is eight.

¹²¹ These two requests did not require any action on the part of TREX because both subjects had not been previously watchlisted. In one case, the individual was the subject of a preliminary investigation that had not been previously watchlisted because the subject did not meet the reasonable suspicion criteria. In the second case, the information was provided by a foreign government. In both instances, the NIS team determined that the individuals did not meet the criteria for inclusion on the watchlist as a non-investigative subject. Because these requests did not require the NIS team to submit a watchlist action to NCTC or the TSC, we used the date that the NIS team notified the case agent of its decision to assess the timeliness of TREX's processing.

¹²² The difference in the total percentage is attributed to rounding.

According to TREX officials, the evaluation of field division and NIS Team compliance with FBI policy related to non-investigative subject watchlisting has not been included in TREX's metrics and compliance process. TREX personnel informed us via e-mail that the NIS Team's compliance with the timeliness standard would be evaluated and said that it would begin to report the NIS Team's compliance effective February 2012. However, TREX officials later said that they were unable to assess the timeliness with which field division and other FBI personnel submit requests for non-investigative subject watchlisting. According to these officials, TREX receives requests for non-investigative subject watchlisting from a variety of sources. For many of these requests, the FBI does not have an open terrorism investigation. As a result, TREX is unable to determine when the nominator obtained the information and whether the nominator submitted the request in a timely manner.

We acknowledge that TREX may not be able to assess the timeliness of some requests for non-investigative watchlisting, such as those received from its LEGAT offices. However, the majority of requests for non-investigative watchlisting received by TREX result from field divisions closing investigations. We believe that the TREX Metrics Team should be able to evaluate whether the field divisions submit such requests for non-investigative subject watchlisting within the 10-business day period after the date the case was closed. Therefore, we recommend that TREX include in its metrics and compliance process the evaluation of field division compliance with timeliness standards for non-investigative subjects.

Annual Review of Non-Investigative Subject Watchlist Records

When the FBI issued its internal watchlist policy in December 2009, it required the NIS Team to verify and validate most non-investigative subject watchlist records annually to ensure that the information remained accurate and that the individual continued to pose a national security threat related to terrorism and should continue to be watchlisted. At that time, the [REDACTED] to be included on the watchlist unless the individual was the subject of an open FBI terrorism investigation.¹²³ When the FBI re-issued its policy in December 2010, [REDACTED] on the watchlist regardless of whether the individuals were the subjects of an open terrorism investigation. However, the FBI did not modify its requirement for the annual review of non-investigative subject watchlist records and the requirement remains that all such records be evaluated annually.

¹²³ As noted previously, the FBI's December 2009 policy required that three criteria be met for an individual to be included on the watchlist as a non-investigative subject: [REDACTED]

We discussed the requirement for annual review with several FBI officials who said that they believed the timing of the reviews to be appropriate. When we discussed the issue with the Director of the TSC, he said that he believed that the annual review for [REDACTED] watchlist records was too frequent and could be completed less frequently. On the other hand, he said that he believed that the FBI should review more frequently the watchlist records [REDACTED], such as when attempting to enter the United States through a point of entry, being stopped by a local law enforcement officer for a traffic violation, or attempting to travel internationally on a commercial airline. [REDACTED] should be reviewed at a minimum of every 6 months.

We agree with the TSC Director that the FBI should review the watchlist records for non-investigative subjects [REDACTED] more frequently than once per year. We also agree that reviewing on an annual basis watchlist records for [REDACTED] for whom the FBI does not have an open investigation may be more frequent than is necessary. We recommend that the FBI evaluate its policy and determine the appropriate frequency for the review of watchlist records for non-investigative subjects, strongly considering in its decisions the likelihood that watchlisted persons will be encountered.

Cases Closed Prior to December 7, 2009

Prior to the issuance of its December 2009 watchlist guidance, the FBI required that subjects of closed *preliminary* terrorism investigations be removed from the watchlist when the investigation closed. Although the FBI's policy permitted the retention on the watchlist of subjects of closed *full* terrorism investigations, we found in our May 2009 audit that the FBI did not have a process for regularly reviewing these records to ensure that the subjects continued to meet the criteria for watchlisting. According to TREX officials, when the NIS Team was established in February 2010 they did not attempt to identify retained watchlist records associated with cases closed prior to the issuance of the December 2009 policy and therefore falling under the previous watchlist guidance.

During our review of the 525 requests for non-investigative subject watchlisting on the NIS tracking spreadsheet, we found that the date of the request recorded by the NIS Team for 170 of the requests predate both the establishment of the NIS Team and the issuance of the December 2009 watchlist policy. When we asked the NIS Team Leader about these records, she could not recall why requests dated prior to the establishment of the NIS Team were included on the NIS tracking spreadsheet. Moreover, the documents maintained by the other TREX teams do not indicate why these records were referred to the NIS Team for review.

To determine the source of these requests, we reviewed 21 requests for non-investigative subject watchlisting for cases that closed prior to the issuance of the December 2009 watchlist guidance. We found that more than 75 percent of the

requests were forwarded to the NIS Team by other TREX teams, including the Modifications and Removals Team and the Metrics Team. For most of these requests, NIS records reflected receipt of the requests from the other TREX teams in early January 2010.

During our review, we identified several requests for non-investigative subject watchlisting for individuals who were convicted of terrorism-related offenses. According to TREX officials, individuals convicted of terrorism-related offenses should be retained on the watchlist as non-investigative subjects because, by nature of their convictions, these individuals meet the definition of a known terrorist. However, prior to the establishment of the NIS Team, the procedures for ensuring that these subjects were appropriately watchlisted were not well documented or coordinated. Although TSC officials believe that it is unlikely that the TSC would have removed a convicted terrorist from the watchlist, we believe it is possible that, if TREX had submitted a watchlist removal when such an investigation was closed, a convicted defendant could have been removed inadvertently from the watchlist.

Because the FBI did not conduct a complete review to ensure that the subjects of terrorism investigations closed prior to December 2009 continue to meet the watchlist guidance, we believe that the FBI should ensure that closed terrorism investigations are reviewed to ensure that individuals convicted of terrorism-related offenses and subjects of preliminary and full investigations are appropriately watchlisted.

Conclusion

Despite using three separate systems to track non-investigative subject watchlist nominations, we found that the FBI had not maintained the necessary records to readily provide an accurate accounting of the actions that were taken regarding the watchlisting status of non-investigative subjects. We found that the processes used by the FBI were redundant and resulted in incomplete, inconsistent, and erroneous data. In addition, we found that FBI personnel continued to use a variety of means to submit nominations to TREX for such individuals. These processes were confusing and contributed to the untimely nomination to and removal from the watchlist of non-investigative subjects.

As a result of our review, the FBI implemented policy and procedures to help to ensure that its processing of non-investigative subject watchlist nominations is more complete, consistent, accurate, and timely. We believe that these improvements are a positive step. However, we identified continued weaknesses in the database used by the FBI to submit, monitor, and track non-investigative subject nominations.

Because non-investigative subjects may be retained on the watchlist for an extended period of time, this subset of watchlist records will continue to grow throughout the years. Without accurate records, it will be increasingly difficult for the FBI to conduct its periodic reviews, to keep track of the universe of watchlisted

non-investigative subjects, and to appropriately make decisions as to whether such individuals should be on the watchlist. Moreover, we believe that the FBI should re-examine the frequency with which it reviews the watchlisting of such individuals to ensure that it is appropriate and practicable.

Recommendations

We recommend that the FBI:

9. Develop and implement policy requiring that all watchlist actions, including requests for non-investigative subject watchlisting, be submitted and processed through one central automated process. The automated process should contain all information necessary for the adequate tracking of watchlist actions, including data needed for the FBI's watchlist metrics process and oversight of the non-investigative subject team.
10. Include in its metrics and compliance process the evaluation of field division compliance with timeliness standards for non-investigative subjects.
11. Evaluate its policies and determine the appropriate frequency for the review of watchlist records for non-investigative subjects.
12. In conjunction with the listing identified in Recommendation 7 in this report, ensure that closed terrorism investigations are reviewed to ensure that individuals convicted of terrorism-related offenses and subjects of preliminary and full investigations are appropriately watchlisted.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards*, we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain a reasonable assurance that FBI's management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. FBI's management is responsible for ensuring compliance with federal laws and regulations applicable to the FBI watchlist nominations, removals, and practices. In planning our audit, we identified the following laws and regulations that concern the operations of the FBI and that were significant within the context of the audit objectives.

- 28 C.F.R. § 0.85
- Homeland Security Presidential Directive 6
- Executive Order 13388 on Further Strengthening the Sharing of Terrorism Information To Protect Americans

Our audit included examining, on a test basis, compliance with the aforementioned laws and regulations that could have a material effect on the FBI's operations, through interviewing FBI personnel, analyzing watchlist nominations and removals, assessing internal controls over watchlist procedures, and examining the FBI practices in relation to nominations and removals of known or suspected terrorists.

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, and (3) violations of laws or regulations. Our evaluation of the FBI's internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. FBI's management is responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of this report, we identified deficiencies in the FBI's internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect the FBI's ability to ensure that known or suspected terrorists were appropriately watchlisted in a timely manner.

Because we are not expressing an opinion on the FBI's management internal control structure as a whole, this statement is intended solely for the information and use of the FBI. This restriction is not intended to limit the distribution of the report, which is a matter of public record. However, we are limiting the distribution of this report because it contains sensitive information that must be appropriately controlled.¹²⁴

¹²⁴ A redacted copy of this report with sensitive information removed will be made available publicly.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objectives

The objectives of our audit were to: (1) evaluate the impact on the FBI's watchlisting system of the failed terrorist attack on December 25, 2009; and (2) assess the effectiveness of FBI initiatives, implemented between 2009 and 2012, that were intended to ensure the accuracy, timeliness, and completeness of the FBI's watchlisting practices, including watchlist nominations and removals.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. Generally, our review focused on, but was not limited to, data encompassing January 1, 2009, to December 31, 2011.

To accomplish the audit objectives, we interviewed FBI officials located at FBI headquarters, including the Counterterrorism Division, International Terrorism Operations Section (ITOS), Domestic Terrorism Operations Section (DTOU), Terrorist Financial Operations Unit (TFOS), and Terrorist Review and Examination Unit (TRES). Additionally, we spoke with officials from the FBI Chicago field division. We also interviewed representatives at the National Counterterrorism Center (NCTC) and the Terrorist Screening Center (TSC).

To evaluate the FBI's compliance with laws, regulations, and internal policies, we reviewed FBI policies and procedures related to watchlisting and terrorism screening. We also reviewed watchlist records, FBI metrics data, files, and other records and reports, as applicable, related to various a judgmentally selected sample of all terrorism investigations opened or closed by four field offices, during the period reviewed, and a judgmental sample of FBI non-investigative subjects. We designed our testing methodology to provide us with broad exposure to the FBI's watchlisting practices. Our sample selection methodology was not designed with the intent of projecting our results to the population of terrorism investigations.

Impact of December 25, 2009, Failed Terrorist Attack

To evaluate the impact of the December 25, 2009, failed terrorist attack on the FBI's watchlisting system, we reviewed FBI and interagency documents and conducted numerous interviews. Our review included an assessment of the FBI's efforts to ensure that the threat-based watchlist modifications were implemented accurately and efficiently.

Testing of the FBI's Watchlist Nominations

According to FBI policy, the subjects of most international terrorism investigations and subjects of most domestic terrorism investigations must be watchlisted. As noted in the report, the FBI implemented a metrics and compliance process to help ensure that known and suspected terrorists are appropriately watchlisted in a timely manner.

To assess the accuracy of the FBI's metrics and compliance process and to determine the appropriateness and timeliness of watchlist nominations, we reviewed metrics and compliance data and watchlist nominations for all cases opened by the Chicago, Illinois; Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota, field divisions during the first quarter of FY 2011.¹²⁵ As a result, we reviewed the watchlist nominations for 113 investigations opened by the four field division offices during the first quarter of FY 2011.¹²⁶ Further, as noted in the report, the FBI implemented a new data system for submitting and processing nominations to the watchlist. To assess the impact of the new data system on the FBI's performance, we reviewed metrics and compliance data and watchlist nominations for 120 investigations opened by the four field division offices during the fourth quarter of FY 2011.

Using these samples of open investigations, we performed various tests to ensure that the information and calculations performed by the FBI's metrics and compliance team were accurate and complete. Further, we analyzed the data to ensure that the FBI complied with its internal timeliness policies, as well as to identify any trends.

During our testing, we identified some data entry errors. When these data entry errors are viewed in context with other available evidence, we believe the opinions, conclusions, and recommendations in this report are valid.

Testing of the FBI's Watchlist Removals

In general, FBI policy requires agents to remove a subject from the watchlist when the terrorism investigation is closed. To assess the accuracy of the FBI's metrics and compliance process and to determine the appropriateness and timeliness of watchlist removals, we reviewed metrics and compliance data and watchlist removals for all cases closed by the Chicago, Illinois; Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota, field divisions during the first quarter of FY 2011. As a result, we reviewed the watchlist removals for

¹²⁵ During our May 2009 audit, we reviewed the watchlist actions processed by the Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota, field divisions. For comparison purposes, we reviewed the watchlist actions for these three field division in this audit. We included the Chicago field division because of its geographic proximity.

¹²⁶ Although there were 113 investigations opened in the four field divisions during the first quarter of FY 2011, one investigation had multiple associated subjects. As a result, we reviewed the watchlist nominations for 115 subjects.

82 investigations closed by the four field division offices during the first quarter of FY 2011. Further, as noted in the report, the FBI implemented a new data system for submitting and processing removals from the watchlist. To assess the impact of the new data system on the FBI's performance, we reviewed the metrics and compliance data and watchlist removals for 104 investigations closed by the four field division offices during the fourth quarter of FY 2011.

Using these samples of closed investigations, we performed various tests to ensure that the information and calculations performed by the FBI metrics and compliance team were accurate and complete. Further, we analyzed the data to ensure that the FBI complied with its internal timeliness policies, as well as to identify any trends.

During our testing, we identified some data entry errors. When these data entry errors are viewed in context with other available evidence, we believe the opinions, conclusions, and recommendations in this report are valid.

FBI Non-Investigative Subjects

In limited circumstances, FBI policy allows for the inclusion on the watchlist individuals for whom the FBI does not have an open investigation or Non-Investigative Subjects (NIS). According to FBI policy, NIS analysts are responsible for tracking and maintaining a list of all non-investigative subjects the FBI has nominated to the watchlist. At the time of our audit, the TREX NIS Team used several methods to track the receipt of a request for non-investigative subjects, as well as the actions taken by the TREX NIS Team to process the request.

We obtained the FBI's spreadsheet on which it tracks key information about its processing of requests for non-investigative subject watchlisting. As of October 22, 2010, the universe of requests for non-investigative subjects was 525 cases. To test the accuracy, completeness, and reliability of the data contained within the NIS spreadsheet, we selected a judgmental sample of 20 requests for non-investigative subject watchlisting from the universe of 525 requests. We performed limited testing of the data in the NIS spreadsheet by comparing the data entered in the spreadsheet for each sample request to source documents, including e-mail, a log maintained by TREX, and the FBI's electronic case management system.

During our review, we identified several inconsistencies and data entry errors. Further, in several instances TREX was unable to provide documentation to support the entries contained on the tracking spreadsheet. As a result of these inconsistencies and errors, we determined that the data entered in the NIS tracking spreadsheet was not sufficiently accurate and reliable for our testing.

We increased the size of our sample and selected 70 cases from the universe of 525 requests for our analysis. Because the FBI implemented its policy regarding non-investigative subject watchlisting on December 7, 2009, we divided our sample of requests by the date the investigation was closed. As a result, we reviewed

APPENDIX I

49 requests for investigations closed after December 7, 2009, and 21 requests for investigations closed before December 7, 2009.

In addition, we obtained source documents to corroborate key dates and information in the NIS watchlist process. We reviewed printouts and emails from other FBI databases, including the TREX log and the FBI's automated case management system. We also reviewed watchlist records from the TSDB. We used this information to determine whether the FBI followed policies and procedures when nominating non-investigative subjects to the watchlist and processed requests for non-investigative subject watchlisting in a timely manner. Further, we reviewed the data to ensure that the FBI maintained adequate documentation to support its action regarding non-investigative subject watchlisting.

DOWNSTREAM SCREENING DATABASES

Known or Suspected Terrorist File – The Known or Suspected Terrorist File (KST) is maintained by the Terrorist Screening Center and housed within the National Crime Information Center (NCIC) database.¹²⁷ The file contains information about individuals of interest to law enforcement due to suspected or known ties to international or domestic terrorism. The KST file was formerly known as the Violent Gang and Terrorist Organization File (VGTOF). In August 2009, the file was split into two separate files: the Gang File and the Known or Suspected Terrorist File.

TECS – The TECS System serves as the principal information system supporting border management and the law enforcement mission of the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) and other federal law enforcement agencies.

Secure Flight – Secure Flight is system used by DHS's Transportation Security Administration to identify individuals that may pose a threat to aviation. In November 2010, Secure Flight assumed full responsibility for pre-flight watchlist screening of passengers on domestic and international flights into, out of, and within the United States. Prior to the implementation of Secure Flight, individual airlines were responsible for pre-flight watchlist screening for domestic flights and CBP was responsible for pre-flight watchlist screening for international flights. Secure Flight now collects passenger information submitted by the airlines for domestic and international flights and vets it against the watchlist. Secure Flight results are then transmitted back to the airline. This process serves to prevent individuals on the No Fly List from boarding an aircraft and to identify individuals on the Selectee List for enhanced screening.

Consular Lookout and Support System – The Consular Lookout and Support System (CLASS) is the State Department's tool for vetting foreign individuals applying for visas to the United States and for individuals applying for U.S. passports. CLASS is divided into two subsystems. CLASS Visa is used by the State Department to screen non-U.S. Persons applying for visas to enter the United States. CLASS Passport is used by the State Department to screen U.S. Persons applying for U.S. passports.

No Fly List – The Transportation Security Administration's (TSA) No Fly List includes names of individuals who are to be denied transport on commercial flights because they are deemed a threat to civil aviation, U.S. facilities, or U.S. vessels. The criteria for the No Fly List is defined by the interagency working group. After the attempted terrorist attack on December 25, 2009, the President requested a review of the No Fly criteria. After the review, a number of recommendations for changes to the criteria list and Implementation Guidance were made and approved on

¹²⁷ NCIC is a nationwide information system maintained by the FBI that provides the criminal justice community with immediate access to information on various law enforcement data, such as criminal history records and missing persons. The FBI's Criminal Justice Information Services Division (CJIS), is responsible for managing the NCIC database.

APPENDIX II

May 25, 2010. The criteria are not listed here because the criteria has been deemed sensitive by the TSA.

Selectee List – The TSA Selectee List includes names of individuals whom air carriers are required to “select” for additional screening prior to permitting them to board an aircraft. The criteria for the Selectee List was established by the interagency working group on October 21, 2004. The criteria are not listed here because the criteria has been deemed sensitive by the TSA.

SUMMARY OF OFFICE OF THE INSPECTOR GENERAL AUDIT REPORTS

Since 2004, the OIG has conducted several audits of the FBI's watchlisting practices and TSC screening practices. Over time the policies and procedures surrounding the nomination and removal of individuals to and from the watchlist has evolved and improved. The following are synopses of the OIG's past audits of the FBI's watchlist nominations practices and the TSC's Secure Flight and screening processes.

09-25 The Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices

In May 2009 the OIG issued audit report 09-25 that examined the FBI's terrorist nomination practices. The objectives of this audit were to: (1) determine whether subjects of FBI terrorism investigations are appropriately and timely watchlisted and if these records are updated with new identifying information as required, (2) determine whether subjects of closed FBI terrorism investigations are removed from the consolidated terrorist watchlist in a timely manner when appropriate, and (3) examine the FBI's watchlist nomination practices for individuals that were not associated with current terrorism case designations.

We found that the FBI failed to nominate several subjects of terrorism investigations that we sampled, did not nominate subjects in a timely manner, and did not update or remove watchlist records as required. Subjects of 15 percent of the 216 terrorism investigations reviewed were not nominated to the consolidated terrorist watchlist, contrary to FBI policy. In addition, 78 percent of the sampled investigations were not processed within FBI guidelines. In 67 percent of the cases reviewed the case agent failed to modify the watchlist record when required by policy, and in 8 percent of the cases reviewed the FBI failed to remove subjects from the watchlist as required by policy. In 72 percent of closed cases the FBI failed to remove the subject in a timely manner.

We also found that international terrorist nominations submitted by CJIS were not properly reviewed by ITOS personnel before being submitted to NCTC. In addition, CJIS had no formal or active process to update or remove records. Finally, a review of a sample of nominations revealed that many of the records in the consolidated watchlist were for individuals who had been appropriately watchlisted but should have been removed from the watchlist when the case had been closed. We made 16 recommendations to the FBI relating to its management of nominations to the consolidated terrorist watchlist. The recommendations included establishing timeframe requirements within headquarter units for processing watchlist nominations, modifications, and removals; creation of a process to modify and remove known or suspected terrorists placed on the watchlist by CJIS and Legal Attaches; and re-evaluation of the watchlist records that are not sourced to a current terrorism case.

08-16 Audit of the U.S. Department of Justice Terrorist Watchlist Nomination Processes

In March 2008, the OIG issued report number 08-16, which examined the DOJ's watchlist nomination processes. The objectives of this report were to determine whether: (1) DOJ's processes and standards for nominating individuals to the consolidated watchlist are consistent, are articulated in policy or other guidance, and are understood by nominators; (2) DOJ components have quality control process to help ensure nominations are accurate, understandable, updated with new information, and include all individuals who should be placed on the watchlist based on information available to the agencies; (3) the responsibility for watchlist nominations is clear, effective and understood; (4) nominators receive adequate training, guidance, or information on the nominations process; (5) DOJ components maintain records of their nominations, including the source of the nomination and what information was provided; and (6) DOJ organizations with terrorism, counterterrorism, and domestic counterterrorism information in their possession, custody, or control appropriately participate in the nominations process.

During this audit we found that the FBI is the only DOJ component that formally nominates known or suspected terrorists for inclusion on the consolidated terrorist watchlist. This review found that FBI personnel understood the FBI's responsibilities regarding the watchlisting process and the FBI had developed processes for nominating known or suspected terrorists to the watchlist, had instituted sound record management procedures for nominations, and provided training on the watchlist nomination process to staff.

In addition, while the FBI established criteria and quality controls to assist in developing nominations, the FBI was not always providing updated nominations when new information about a subject became available and records were not being removed when appropriate to do so. Watchlist nominations were also often incomplete or contained inaccuracies which delayed the nominations process. There were also inconsistencies regarding how DOJ components shared terrorism information. Components were sharing information in an informal manner and at least one component did not categorize criminal activity as being terrorism related in a manner similar to the FBI. We made seven recommendations to DOJ and components to help improve the watchlist nomination policies, processes, and practices. The recommendations included establishing DOJ-wide watchlisting guidance, enhancing FBI watchlisting policies, and ensuring the correct sourcing of watchlist records that result from information shared by DOJ components.

07-41 Follow-up Audit of the Terrorist Screening Center

The OIG issued its report on a follow-up audit of the TSC. The objectives of the audit were to: (1) determine if accurate and complete records were disseminated to and from the watchlist database in a timely fashion, (2) review the TSC's efforts to ensure the quality of the information in the watchlist database, and

(3) assess the TSC's efforts to address complaints raised by individuals who believe they have been incorrectly have identified as watchlist subjects.

During the course of the audit we found that the TSC enhanced its efforts to ensure the quality of watchlist data, increased staff assigned to data quality management, and had developed a process and a separate office to address complaints filed by persons seeking relief from adverse effects related to terrorist watchlisting. Despite this it was determined that the TSC's management of the watchlist continued to have weaknesses. At the time TSC was relying on two interconnected versions of the watchlist database that contributed to several known or suspected terrorists not being watchlisted properly. In addition we found that the number of duplicate records in the database had increased from the previous review, and the FBI bypassed the normal international terrorist watchlist nomination process by entering the nominations directly into a downstream screening system. Furthermore we identified that although the TSC had increased its quality assurance efforts since the previous OIG review, the TSC continued to lack safeguards for ensuring data integrity and a protocol outlining the agency's quality assurance procedures and a method for regularly reviewing the work of its staff.

This audit also found that the TSC was following procedures and reaching appropriate resolutions in its review of complaints filed by individuals seeking redress from adverse experiences that they believed were the result of terrorist watchlisting screening. Despite this, it was determined that these reviews were not always completed in a timely manner.

The OIG made 18 recommendations to help the TSC improve its operations and the quality of watchlist data.

05-34 Review of the Terrorist Screening Center's Efforts to Support the Secure Flight Program

We conducted a review of the TSC's actions with regard to Secure Flight in response to House Report 109-072, which directed the OIG to evaluate the TSC's plan to support the Secure Flight program and to report the House and Senate Appropriations Committees on the results of this review. The objective of this review was to evaluate the TSC's plan to support the Secure Flight program, as requested by the House Appropriations Committee in House Report 109-72.

During this audit we found that the TSC had designed its necessary electronic connections to accommodate the transfer to terrorist watchlist records, airline passenger information, and screening results; developed new processes to facilitate law enforcement responses to encounters with individuals who are a match against the consolidated terrorist watchlist; and was on schedule for testing its newly established systems and procedures relating to Secure Flight. Despite this, the TSA had repeatedly adjusted the implementation date for Secure Flight numerous times which made it difficult for the TSA and the TSC to know how many passenger records would be screened and to project the number of watchlist hits that would

ultimately be forwarded to the TSC for action. Furthermore at the time of this audit, TSC lacked the ability to identify specific costs that were in support of the Secure Flight program.

The OIG made five recommendations to the TSC to help it support the Secure Flight program. TSC management agreed with the recommendations.

05-27 Review of the Terrorist Screening Center

The OIG conducted this review of the TSC to examine whether the TSC: (1) had implemented a viable strategy for accomplishing its mission; (2) was effectively coordinating with participating agencies; and (3) is appropriately managing terrorist-related information to ensure that a complete, accurate and current consolidated watchlist is developed and maintained.

We found that several areas of the TSC operations needed improvement. The TSC had difficulty pulling together fragmented terrorist watchlist information, an immature IT environment, and a transitory workforce. Furthermore the creation of the consolidated database had weaknesses that at the time had not been addressed. Database controls and search capabilities were necessary to ensure that watchlist data was safeguarded, database history was retained, and screeners were able to readily identify within the TSDB individuals encountered. The database was also lacking in controls to verify completeness and accuracy of the records and there was a lack of sufficient training, oversight, and general management of the call screeners had left the activities of call centers vulnerable to procedural errors, poor data entry, and untimely responses to callers.

The OIG provided 40 recommendations in the areas of database improvements, data accuracy and completeness, call center management, operational planning, coordination between participating agencies, and staffing.

**WATCHLIST STATUS MODIFICATION INITIATIVES
AND RELATED DEEP DIVE REVIEWS**

Initiative Description	Total Persons	Date Review Initiated	Records At Start (1 Day prior to Project Initiation)				Where are they now?				Deep Dive Completion Date
			TSDB No-Fly	TSDB Selectee	TSDB Neither No Fly or Selectee	Rejected/Removed from TSDB	TSDB No Fly	TSDB Selectee	TSDB Neither No Fly or Selectee	Rejected/Removed from TSDB	
UPGRADE TO SELECTEE: Previously watchlisted [REDACTED]	[REDACTED]	6/18/2010	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	12/07/11
UPGRADE TO SELECTEE: Not previously watchlisted [REDACTED]	[REDACTED]	6/18/2010	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	12/07/11
UPGRADE TO NO FLY LIST: Guantanamo Detainees	[REDACTED]	No review required	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Not required
UPGRADE TO NO FLY/SELECTEE: [REDACTED]	[REDACTED]	2/8/2010	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	06/25/10
UPGRADE: [REDACTED] individuals: Previously watchlisted - upgrade to No Fly Not previously watchlisted - watchlist and upgrade to Selectee	[REDACTED]	2/25/2010	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	06/30/11

Source: Terrorist Screening Center

As shown, the TSC tracked and monitored the status of the deep dive reviews of individuals whose watchlist status was altered as a result of the events on December 25, 2009. For each group, the TSC recorded the watchlist statuses 1 day prior to the date of the initial watchlist modifications. In addition, the TSC recorded the watchlist statuses once the in-depth review was concluded.

**FEDERAL BUREAU OF INVESTIGATION'S
RESPONSE TO THE DRAFT REPORT**



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 23, 2013

The Honorable Michael E. Horowitz
Inspector General
Office of the Inspector General
U. S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Mr. Horowitz:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your office's report entitled, *The Federal Bureau of Investigation's Management of Terrorist Watchlist Nominations*.

We are pleased that you determined the Terrorist Screening Center (TSC) responded "commendably" to the attempted terrorist attack on December 25, 2009 despite policy weaknesses and associated technical and procedural limitations. In addition, it is reassuring to know you determined the improvements implemented by the FBI to the watchlist nomination process over the past several years has helped to ensure the watchlist is more "complete, accurate, and current."

As noted, the FBI and TSC continue to implement new policies and procedures to strengthen the watchlisting operations and practices. In that regard, the FBI and TSC appreciate your oversight and concur with each of the twelve recommendations. Please find enclosed our initial steps to resolve each.

Should you have any questions, feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew G. McCabe".

Andrew G. McCabe
Acting Executive Assistant Director
National Security Branch

Enclosure (2)

APPENDIX V

Report Recommendation #1: Require the TSC to develop formal and comprehensive procedures for the full documentation of crisis events that may result in expedited watchlist upgrades or other emergency actions related to the watchlist. The procedures should address the types of documentation that must be retained, the method of retention, the length of time the documents must be retained, and the individuals responsible for collecting and maintaining the documentation.

FBI Response to Recommendation #1: The TSC accepts this recommendation. The TSC will review its existing procedures relating to expedited watchlist upgrades or other emergency actions related to the watchlist to ensure the inclusion of instructions regarding what material to maintain, where it should be filed, the length of time it should be kept on file, and list appropriate approving officials to authorize certain activities.

Report Recommendation #2: Require the TSC to continue the development and implementation of enhancements to the TSDB that will allow the TSC to more efficiently identify individuals who meet threat-based criteria and to track any resulting watchlist record modifications, and also to ensure that modified records are subsequently reviewed in a timely fashion to determine their appropriate watchlist status after the specific threat has passed or the designated period of modification has expired.

FBI Response to Recommendation #2: The TSC accepts this recommendation. The TSC has developed and deployed automated mechanisms to track watchlist status and actions required relative to persons involved in a temporary, threat-based watchlist change. Modifications to the TSDB support the marking and tracking of threat-based populations. As of February 2014, TSC released an additional enhancement allowing for the export of an indicator to relevant stakeholders, which will identify records associated with a threat-based population. This functionality also allows for review or downgrade once the threat expires. Combined, these IT upgrades provide a robust threat-based reporting and tracking capability that the TSC can quickly execute.

Report Recommendation #3: Review the subjects of terrorism investigations opened under its previous policy guidelines to determine whether the FBI possesses sufficient biographical and derogatory information to support forwarding the information to NCTC for review and potential watchlisting.

FBI Response to Recommendation #3: The FBI accepts OIG's recommendation, and will undertake a review pending cases opened between December 2009 and March 2012 which are not watchlisted, to determine if there is sufficient biographic and derogatory information to support a nomination under current policy.

Report Recommendation #4: Re-assess its timeliness standards for field division submission of watchlist nominations, including the possibility of mandating the existing best practice of submitting watchlist nominations at the same time as the opening communication.

FBI Response to Recommendation #4: The FBI accepts OIG's recommendation, and will undertake a review of its existing standards.

Report Recommendation #5: Re-evaluate the overall nomination process and timeframes to determine the most effective and efficient methods, including through the use of technology, to ensure that subjects are reliably nominated to the watchlist in a timely manner. For example, the FBI should explore

APPENDIX V

technological solutions within its case management system that would automatically trigger the generation of a watchlist nomination when a case agent officially opens a case and has the requisite identifying information for nomination.

FBI Response to Recommendation #5: The FBI accepts OIG's recommendation, and agrees leveraging improved technology is the preferred solution for a streamlined watchlisting system. The FBI's Sentinel program office has tentatively scheduled integration of watch list nominations with Sentinel for sometime in 2014. The developers have not as yet determined the complexity of the work that will be required to fulfill this requirement. In light of existing fiscal constraints and the uncertainty of future budgets, a time line for deployment of such technology is not available.

Report Recommendation #6: Review all of its watchlist guidance and procedures to ensure that they are accurate, complete, and consistent, including those applicable to the new functionality within the TSDB for identifying expedited nominations and the requirements for closure of terrorism investigations.

FBI Response to Recommendation #6: The FBI/TSC accepts OIG's recommendation. The TSC has updated its standard operating procedures to reflect the new TSDB functionality and the new business rules associated with the functionality. Also the TSC and CTD have worked closely to develop FBI watchlisting policies, and will continue to do so. The FBI is currently working on updates to its policy in light of the most recent guidance to the interagency watchlisting community.

Report Recommendation #7: Develop the ability to independently generate a complete listing of FBI terrorism subjects who are eligible for inclusion on the watchlist, those for whom it has submitted a watchlist nomination, and whether the nominations are active or removed.

FBI Response to Recommendation #7: The FBI/TSC accepts OIG's recommendation. Currently, the information resides within separate systems. The TSC and CTD will jointly explore possible IT solutions to respond to OIG's recommendation.

Report Recommendation #8: Re-evaluate the timeframes for submission and processing of removal packages by the field divisions and TREX.

FBI Response to Recommendation #8: The FBI accepts OIG's recommendation, and will undertake a review of its existing standards.

Report Recommendation #9: Develop and implement policy requiring that all watchlist actions, including requests for non-investigative subject watchlisting, be submitted and processed through one central automated process. The automated process should contain all information necessary for the adequate tracking of watchlist actions, including data needed for the FBI's watchlist metrics process and oversight of the non-investigative subject team.

FBI Response to Recommendation #9: The FBI accepts OIG's recommendation. TSC has already undertaken efforts to modify the KST Watchlisting Database to accept NIS nominations. We will complete the necessary technical changes, and update existing policy to reflect the new process.

APPENDIX V

Report Recommendation #10: Include in its metrics and compliance process the evaluation of field division compliance with timeliness standards for non-investigative subjects.

FBI Response to Recommendation #10: The FBI/TSC accepts OIG's recommendation with respect to generating metrics for non-investigative subjects based on the field's closing of a predicated investigation. As of September 2013, the TSC has modified its systems to allow the TSC to determine if/when FBI subjects were nominated as NISs upon the closing of FBI investigations. A timeliness standard cannot be applied to other forms of NIS submissions because there is no reasonable mechanism to determine when information is received by a field division that would qualify a subject for NIS.

Report Recommendation #11: Evaluate its policies and determine the appropriate frequency for the review of watchlist records for non-investigative subjects.

FBI Response to Recommendation #11: The FBI accepts OIG's recommendation, and will undertake a review of its existing standards.

Report Recommendation #12: In conjunction with the listing identified in Recommendation 7 in this report, ensure that closed terrorism investigations are reviewed to ensure that individuals convicted of terrorism-related offenses and subjects of preliminary and full investigations are appropriately watchlisted.

FBI Response to Recommendation #12: The FBI accepts OIG's recommendation, and believes the procedural and policy changes discussed above in response to recommendations 6, 8, and 9 will also be able to address the concerns presented by this recommendation.

**OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

The OIG provided a draft of this audit report to the FBI for review and comment. The comments that we received from the FBI, which detail the actions taken or plans for implementing our recommendations, have been incorporated in Appendix V of this final report. Our analysis of this response and a summary of the actions necessary to close each recommendation are presented below.

Recommendation Number:

1. **Resolved.** The FBI concurred with our recommendation to require the TSC to develop formal and comprehensive procedures for the full documentation of crisis events that may result in expedited watchlist upgrades or other emergency actions related to the watchlist. In its response, the FBI said that the TSC will review its existing procedures relating to expedited watchlist upgrades or other emergency actions related to the watchlist to ensure the inclusion of instructions regarding what material to maintain, where it should be filed, the length of time it should be kept on file, and list appropriate approving officials to authorize certain activities.

This recommendation can be closed when the FBI provides evidence that it has developed formal and comprehensive procedures for the full documentation of crisis events that may result in expedited watchlist upgrades or other emergency actions related to the watchlist.

2. **Resolved.** The FBI concurred with our recommendation to require the TSC to continue the development and implementation of enhancements to the TSDB that will allow the TSC to more efficiently identify individuals who meet threat-based criteria and to track any resulting watchlist record modifications, and also to ensure that modified records are subsequently reviewed in a timely fashion to determine their appropriate watchlist status after the specific threat has passed or the designated period of modification has expired.

In its response, the FBI reported that the TSC has developed and deployed automated mechanisms to mark and track watchlist status and actions for persons involved in a temporary, threat-based watchlist change. The FBI reported that, as of February 2014, the TSC released an additional enhancement that allows for the export of an indicator to relevant stakeholders. In turn, this will allow the identification of records associated with a specific threat-based population. The FBI reported that this functionality also allows for review or downgrade once the threat expires.

This recommendation can be closed when the FBI provides evidence that it has implemented TSDB enhancements that allow the TSC to more efficiently

identify individuals who meet threat-based criteria and to track any resulting watchlist record modifications, and also to ensure that modified records are subsequently reviewed in a timely fashion to determine their appropriate watchlist status after the specific threat has passed or the designated period of modification has expired.

3. **Resolved.** The FBI concurred with our recommendation to require the TSC to review the subjects of terrorism investigations opened under its previous policy guidelines to determine whether the FBI possesses sufficient biographical and derogatory information to support forwarding the information to NCTC for review and potential watchlisting. In its response, the FBI reported that it will review pending cases opened between December 2009 and March 2012 without associated watchlist records, to determine if there is sufficient biographic and derogatory information to support a nomination under current policy.

This recommendation can be closed when the FBI provides evidence that it has reviewed the subjects of terrorism investigations opened under its previous policy guidelines to determine whether the FBI possesses sufficient biographical and derogatory information to support forwarding the information to NCTC for review and potential watchlisting.

4. **Resolved.** The FBI concurred with our recommendation to re-assess its timeliness standards for field division submission of watchlist nominations, including the possibility of mandating the existing best practice of submitting watchlist nominations at the same time as the opening communication. In its response, the FBI reported that it will review its existing standards.

This recommendation can be closed when the FBI provides evidence that it has re-assessed its timeliness standards for field division submission of watchlist nominations, including the possibility of mandating the existing best practice of submitting watchlist nominations at the same time as the opening communication.

5. **Resolved.** The FBI concurred with our recommendation to re-evaluate the overall nomination process and timeframes to determine the most effective and efficient methods, including through the use of technology, to ensure that subjects are reliably nominated to the watchlist in a timely manner. For example, the FBI should explore technological solutions within its case management system that would automatically trigger the generation of a watchlist nomination when a case agent officially opens a case and has the requisite identifying information for nomination.

In its response, the FBI reported that it agreed that leveraging improved technology is the preferred solution for a streamlined watchlisting system. The FBI said that the Sentinel program office has tentatively scheduled integration of watchlist nominations with Sentinel for 2014. According to the FBI, the developers have not as yet determined the complexity of the work

APPENDIX VI

that will be required to fulfill this requirement. Further, the FBI reported that a timeline for deployment of such technology is not available because of existing fiscal constraints and the uncertainty of future budgets.

This recommendation can be closed when the FBI provides evidence that it has re-evaluated the overall nomination process and timeframes to determine the most effective and efficient methods, including through the use of technology, to ensure that subjects are reliably nominated to the watchlist in a timely manner.

6. **Resolved.** The FBI concurred with our recommendation to review all of its watchlist guidance and procedures to ensure that they are accurate, complete, and consistent, including those applicable to the new functionality within the TSDB for identifying expedited nominations and the requirements for closure of terrorism investigations.

In its response, the FBI reported that the TSC had updated its standard operating procedures to reflect the new TSDB functionality and the new business rules associated with the functionality. Also, the FBI reported that the TSC and the FBI's Counterterrorism Division (CTD) have worked closely to develop FBI watchlisting policies, and would continue to do so. The FBI reported that it is currently working on updates to its policy in light of the most recent guidance to the interagency watchlisting community.

This recommendation can be closed when the FBI provides evidence that it has reviewed all of its watchlist guidance and procedures to ensure that they are accurate, complete, and consistent, including those applicable to the new functionality within the TSDB for identifying expedited nominations and the requirements for closure of terrorism investigations. In addition, the FBI should provide copies of any new procedures and guidance that it has issued following the completion of our audit work.

7. **Resolved.** The FBI concurred with our recommendation that it develop the ability to independently generate a complete listing of FBI terrorism subjects who are eligible for inclusion on the watchlist, those for whom it has submitted a watchlist nomination, and whether the nominations are active or removed. In its response, the FBI reported that information needed to generate the recommended list of FBI terrorism subjects resides within separate data systems. The FBI reported that the TSC and CTD jointly will explore possible information technology solutions.

This recommendation can be closed when the FBI provides evidence that it has developed the ability to independently generate a complete listing of FBI terrorism subjects who are eligible for inclusion on the watchlist, those for whom it has submitted a watchlist nomination, and whether the nominations are active or removed.

8. **Resolved.** The FBI concurred with our recommendation to re-evaluate the timeframes for submission and processing of removal packages by the field divisions and the TSC's Terrorist Review and Examination Unit (TREX). In its response, the FBI reported that it will review its existing standards.

This recommendation can be closed when the FBI provides evidence that it has re-evaluated the timeframes for submission and processing of removal packages by the field divisions and TREX.

9. **Resolved.** The FBI concurred with our recommendation that it develop and implement policy requiring that all watchlist actions, including requests for non-investigative subject watchlisting, be submitted and processed through one central automated process. In its response, the FBI reported that the TSC had begun to modify the KST Watchlisting Database to accept non-investigative subject watchlist nominations. The FBI reported that it would complete the necessary technical changes and update existing policy to reflect the new process.

This recommendation can be closed when the FBI provides evidence that it has developed and implemented policy requiring that all watchlist actions, including requests for non-investigative subject watchlisting, be submitted and processed through one central automated process. The automated process should contain all information necessary for the adequate tracking of watchlist actions, including data needed for the FBI's watchlist metrics process and oversight of the non-investigative subject team.

10. **Resolved.** The FBI concurred with our recommendation to include in its metrics and compliance process the evaluation of field division compliance with timeliness standards for non-investigative subjects. In its response, the FBI reported that in September 2013 the TSC modified its systems to allow the TSC to determine if and when FBI subjects were nominated as non-investigative subjects upon the closing of FBI investigations. In addition, the FBI stated that a timeliness standard could not be applied to other forms of non-investigative subject submissions because there is no reasonable mechanism to determine when information is received by a field division that would qualify a subject for watchlisting as a non-investigative subject. However, we believe that the FBI generally maintains documentation indicating when information is received and by whom and that this information could be used to evaluate the timeliness of submissions to TREX for non-investigative subjects.

This recommendation can be closed when the FBI provides evidence that its metrics and compliance process includes the evaluation of field division compliance with timeliness standards for non-investigative subjects. This should include documentation related to the September 2013 system enhancement and information related to evaluation mechanisms for other forms of non-investigative subject submissions.

APPENDIX VI

11. **Resolved.** The FBI concurred with our recommendation to evaluate its policies and determine the appropriate frequency for the review of watchlist records for non-investigative subjects. In its response, the FBI reported that it will evaluate its policies and determine the appropriate frequency for the review of watchlist records for non-investigative subjects.

This recommendation can be closed when the FBI provides evidence that it has evaluated its policies and determined the appropriate frequency for the review of watchlist records for non-investigative subjects.

12. **Resolved.** The FBI concurred with our recommendation to, in conjunction with the listing identified in Recommendation 7 in this report, ensure that closed preliminary and full terrorism investigations are reviewed to ensure that subjects convicted of terrorism-related offenses are appropriately watchlisted. In its response, the FBI reported that the procedural and policy changes discussed in response to Recommendations 6, 8, and 9 will also address this recommendation.

This recommendation can be closed when the FBI provides evidence that it has ensured all closed preliminary and full terrorism investigations are reviewed to ensure that subjects convicted of terrorism-related offenses are appropriately watchlisted. This should include reviewing previously closed FBI investigations, identified in Recommendation 7, to identify and watchlist individuals who were convicted of terrorism-related offenses.