



SOUTHWEST BORDER PROSECUTION INITIATIVE REIMBURSEMENT PROGRAM

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SOUTHWEST BORDER PROSECUTION INITIATIVE REIMBURSEMENT PROGRAM

EXECUTIVE SUMMARY

The U.S. border with Mexico extends nearly 2,000 miles along the southern borders of California, Arizona, New Mexico, and Texas. The Department of Homeland Security, U.S. Customs and Border Protection, has primary federal responsibility for detecting and preventing illegal entry into the United States. At the same time, the Department of Justice (DOJ) plays an important role in border enforcement through prosecution, detainment, and incarceration of individuals who violate federal criminal laws related to alien smuggling, firearms trafficking, illegal immigration, and illegal drug importation.

In 1994, U.S. Attorney Offices along the Southwest Border began to establish partnerships with state and county prosecutors through which states and local governments began prosecuting federally initiated drug cases resulting from the illegal importation of controlled substances at the Southwest Border. As the number of federally declined criminal cases prosecuted by state and local governments began to increase, so did the related financial and resource burden on the states and localities. As a result, in fiscal year (FY) 1998, state and local prosecutors along the Southwest Border began informing the DOJ that they would no longer be able to prosecute federally initiated cases unless they received federal funds. To address these concerns, in 2000 Congress passed Public Law 106-246 to provide FY 2001 funding to state, county, parish, tribal, and municipal governments to reimburse them for costs associated with the prosecution and pre-trial detention of federally initiated illegal immigration and drug and alien smuggling cases that subsequently are declined by the U.S. Attorneys offices and instead referred to state and local jurisdictions. However, none of the subsequent appropriations limit the types of federally initiated cases that are allowable for reimbursement. As a result, any federally initiated case that is declined by the U.S. Attorneys offices and subsequently prosecuted by an eligible state or local jurisdiction is allowable for reimbursement.

Initially, the program was administered by the Executive Office for United States Attorneys (EOUSA) in DOJ. However, in FY 2002 the management of the Southwest Border Prosecution Initiative (SWBPI) was transferred to the Office of Justice Programs (OJP), DOJ's grant-making arm.

From October 1, 2001, through September 31, 2006, OJP provided reimbursements totaling \$161.13 million to the four Southwest Border states and local jurisdictions, as shown in Table 1.

TABLE 1.
SWBPI REIMBURSEMENTS (DOLLARS IN MILLIONS)¹

| STATES | FY02 | FY03 | FY04 | FY05 | FY06 | TOTALS |
|---------------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| Arizona | \$ 3.00 | \$ 3.41 | \$ 2.14 | \$ 1.70 | \$ 2.70 | \$ 12.95 |
| California | 18.45 | 15.63 | 12.78 | 13.00 | 16.32 | 76.19 |
| New Mexico | 5.75 | 8.45 | 6.54 | 6.26 | 3.59 | 30.58 |
| Texas | 11.77 | 11.07 | 6.82 | 7.04 | 4.71 | 41.41 |
| SWBPI Totals | \$38.97 | \$38.55 | \$28.28 | \$28.00 | \$27.33 | \$161.13 |

Source: Office of Justice Programs

SWBPI Guidelines

Eligible SWBPI applicants submit quarterly electronic applications for reimbursement through the Bureau of Justice Assistance (BJA) SWBPI website. On the reimbursement applications, SWBPI recipients list the total number of cases in each of the three major categories based on the types of services provided: (1) prosecution only, (2) pre-trial detention only, and (3) both prosecution and pre-trial detention. The three major service categories are further broken down into four reimbursement categories based on the length of disposition: (1) 1 to 15 days, (2) 16 to 30 days, (3) 31 to 90 days, and (4) over 90 days.²

BJA does not require SWBPI applicants to provide documentation supporting the number of cases submitted for reimbursement through the electronic application. However, jurisdictions that receive SWBPI funds are required to retain documentation supporting the reimbursement requests for 3 years from the date the application is approved.

¹ Throughout this report, differences in the total amounts are due to rounding.

² Case disposition is the length of time between a suspect's arrest and the resolution (e.g., dismissal, plea, conviction) of the criminal charges through a county or state judicial process.

Reimbursement Amounts

Each eligible case may receive the following maximum reimbursement, based upon length of disposition, availability of funds, and the provision of both prosecution services and pre-trial detention services.

**TABLE 2.
MAXIMUM SWBPI REIMBURSEMENTS**

| LENGTH OF DISPOSITION | MAXIMUM REIMBURSEMENT |
|------------------------------|------------------------------|
| 1 to 15 Days | \$ 2,500 |
| 16 to 30 Days | 5,000 |
| 31 to 90 Days | 7,500 |
| Over 90 Days | 10,000 |

Source: OJP

To calculate the reimbursement amount for cases submitted for both prosecution and pre-trial detention services, the length of the prosecution takes precedence in calculating the case disposition category. For prosecution only and pre-trial detention only cases, each eligible case may receive 50 percent of the maximum reimbursement.

Case Eligibility

To be eligible for reimbursement under the SWBPI program, each case submitted must meet the following criteria.

- The case must be initiated by a federal law enforcement agency.
- The case must be declined for federal prosecution and referred to the local jurisdiction for prosecution.
- The case must be prosecuted by a state or local jurisdiction.
- The case must be disposed of during an eligible reporting period.

In addition, on each quarterly application the jurisdiction's Chief Executive Officer (CEO) or designee must certify that the total amount requested for reimbursement, when combined with other federal funding, does not exceed 100 percent of the jurisdiction's annualized costs for SWBPI prosecution and pre-trial detention services. Further, the CEO or designee

must certify that the SWBPI claim has been adjusted to account for additional prosecution and pre-trial detention funding received through other federal programs.

Recent Guidance

Our audit generally covered SWBPI reimbursements awarded from FYs 2002 through 2006.³ Therefore, we used the SWBPI guidelines in effect during the period covered by our audit when conducting our analysis. However, in July 2007 OJP updated the SWBPI guidelines and made the following changes:

- The new guidelines no longer state that recipients cannot receive reimbursements in excess of 100 percent of their actual annualized costs. Nonetheless, at the time SWBPI reimbursement applications are submitted, the jurisdiction's CEO or designee is still required to certify that, "This application does not contain payment claims for cases already fully reimbursed by federal funds, or when combined with other federal reimbursement, grant, or payment funds, does not make payment claims in excess of 100 percent of the cost of prosecuting and or detaining case defendants in the reporting period."
- The July 2007 guidelines no longer contain the statement that when a case is submitted under the "both" category, the prosecution timeline takes precedence in determining the case reimbursement category. However, the OJP application still allows for cases to be submitted under the "both" category rather than requiring that prosecution and pre-trial detention reimbursements be submitted separately.
- The July 2007 guidelines specify that new cases resulting from probation or parole violations and revocation hearings resulting from a previously reimbursed SWBPI case are not eligible for reimbursement. Further, extradition cases are also not eligible for reimbursement. Although none of these types of cases would have been eligible for reimbursement under the previous guidelines, the revised guidelines ensure that jurisdictions are aware of the fact that these types of cases are ineligible.

³ OJP has accepted applications for all of FY 2007, but as of January 31, 2008, had not made any reimbursements for FY 2007 SWBPI submissions.

Prior Reports

Prior to the initiation of this audit, the OIG conducted three previous audits of individual SWBPI recipients to determine if the reimbursement requests submitted were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of SWBPI. The prior audits included review of the: (1) New Mexico Department of Public Safety (New Mexico DPS); (2) Yuma County Attorney's Office, Arizona (Yuma County); and (3) Maricopa County Attorney's Office, Arizona (Maricopa County).⁴ Taken together, the prior SWBPI audits revealed dollar-related findings totaling over \$1.6 million.

Additionally, for the past 8 years grant management has been identified by the Office of the Inspector General (OIG) as one of DOJ's top 10 management and performance challenges. Specifically, the OIG has reported that grant management continues to be a challenge for the following reasons:

- OIG reviews continue to find that many grantees do not submit required financial and progress reports or do not submit them in a timely manner;
- Numerous deficiencies continue to be found in DOJ's monitoring of grantee activities;
- OIG audits found that grant funds were not regularly awarded in a timely manner and that grantees were slow to spend available monies; and
- OIG audits of grants have resulted in significant dollar-related findings.

Although SWBPI is a reimbursement program rather than a grant program, in our judgment the same concerns related to OJP's management and oversight of the program exist.

Audit Approach

We initiated this audit of SWBPI to:

- Evaluate OJP's administration and management of SWBPI reimbursements;

⁴ Our audit of the New Mexico DPS included the 2nd, 3rd, and 11th Judicial Districts.

- Identify additional federal programs with overlapping objectives; and
- Determine if SWBPI reimbursement requests submitted by eligible jurisdictions are allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program.

The audit generally covered, but is not limited to, SWBPI reimbursements awarded from FYs 2002 through 2006. Audit work was conducted at OJP; the Office of National Drug Control Policy (ONDCP); the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); the Drug Enforcement Administration (DEA); the Federal Bureau of Investigation (FBI); and EOUSA.

Additionally, we conducted seven external audits of SWBPI recipients to determine if SWBPI reimbursements were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program. The external audits were conducted at the following selected SWBPI recipients: (1) New Mexico DPS; (2) Yuma County; (3) Maricopa County; (4) El Paso County Auditor's Office, Texas (El Paso County); (5) San Diego District Attorney's Office, California (San Diego); (6) Brooks County, Texas (Brooks County); and (7) City and County of San Francisco, California (San Francisco).

Results in Brief

We found that OJP does not adequately oversee the SWBPI program. Specifically:

- OJP does not require applicants to provide documentation supporting reimbursement requests. In our judgment, most of the unallowable and unsupported reimbursements totaling \$15.57 million, or 28 percent of the total reimbursements audited, identified in our seven external audits could have been avoided if OJP required applicants to submit supporting documents.⁵
- OJP does not review the applications for accuracy or monitor recipients to determine the eligibility of cases submitted for reimbursement.

⁵ It should be noted that the dollar-related findings identified in our reviews of the seven SWBPI recipients were addressed in separate external audit reports. Thus, we are not offering any recommendations in this report specific to the \$15.57 million in unallowable and unsupported reimbursements and \$27,500 in funds to be put to better use.

- Reimbursements are not linked to actual costs incurred by the jurisdictions to prosecute federally declined-referred criminal cases.⁶
- OJP has not taken action to identify potential duplicate funding between the SWBPI program and other federally funded prosecution and pre-trial detention programs.

As noted above, SWBPI is intended to reimburse state and local governments for their costs associated with the prosecution and pre-trial detention of federally initiated criminal cases. Accordingly, on every SWBPI reimbursement application, the jurisdiction's CEO or designee certifies that the SWBPI claim, combined with other federal funding, does not exceed 100 percent of the cost of prosecuting and detaining case defendants in the reporting period. However, we found that none of the seven jurisdictions included in our audit maintained any documentation to support costs associated with SWBPI cases submitted for reimbursement, resulting in reimbursements totaling \$49.78 million in excess of supported annualized costs. In our judgment, this is not consistent with the intent of the program to reimburse states and localities for their costs.

Additionally, on every SWBPI reimbursement application the jurisdiction's CEO or designee is required to certify that the SWBPI claim has been adjusted to account for additional prosecution and pre-trial detention funding received through other federal programs. However, we found that with the exception of El Paso County, none of the jurisdictions included in our audit who received additional federal funding for prosecution and pre-trial detention services took any steps to ensure that the SWBPI reimbursements, when combined with additional federal funding, did not exceed the cost to prosecute the SWBPI cases.⁷

In our judgment, the jurisdictions included in our audit made unsupported certifications in each quarterly SWBPI reimbursement application that: (1) the total federal funds provided to the jurisdiction for SWBPI cases during the reporting period did not exceed 100 percent of the jurisdiction's annualized costs for prosecution services; and (2) the SWBPI

⁶ Declined-referred is a term used in the SWBPI guidelines to refer to a point in time during a federal investigation when a U.S. Attorney or federal law enforcement official decides not to pursue federal criminal charges against a defendant (declination) and requests that a state or local jurisdiction prosecute the defendant for violating state or local criminal statutes (referral).

⁷ Although El Paso County did not track its costs to prosecute SWBPI cases, \$1.51 million was deducted from its SWBPI reimbursement requests in an attempt to ensure that federal funding did not exceed 100 percent of the costs associated with the cases submitted.

claim has been adjusted to account for additional funding received through other federal reimbursement or grant programs.

Finally, our external audits of the seven SWBPI recipients, who together received reimbursements totaling \$55.11 million over a 5-year period, identified unallowable and unsupported SWBPI reimbursements of \$15.57 million, which equates to 28 percent of the total reimbursements.⁸

The importance of the issues identified in our audit are reinforced by the fact that, as of the 4th quarter of FY 2006, OJP was only able to reimburse SWBPI applicants for 44 percent of the total maximum reimbursement amount because reimbursement requests exceeded available funding. If OJP ensured that only eligible cases were reimbursed and reimbursements were linked to the actual costs to prosecute and detain SWBPI defendants, additional funds would be available to more fully reimburse existing SWBPI jurisdictions for the actual costs of eligible cases.⁹

In our report, we make 13 recommendations to improve OJP's management of the SWBPI program to ensure that reimbursement requests are limited to eligible cases; linked to and do not exceed actual costs; and adjusted to account for funds received from other federal prosecution and detention funding programs.

Our report contains detailed information on the full results of our review of the Southwest Border Prosecution Initiative Reimbursement Program. The remaining sections of this Executive Summary describe in more detail our audit findings.

OJP's Administration and Oversight of the Reimbursements

Our audit results revealed that OJP is not adequately overseeing the SWBPI program. We found that OJP does not require applicants to provide documentation supporting reimbursement requests. In our judgment, most of the unallowable and unsupported reimbursements totaling \$15.57 million, or 28 percent of the total reimbursements audited, identified in our seven

⁸ We also identified funds to be put to better use totaling \$27,500 related to unsupported and ineligible cases submitted for reimbursement that had not yet been paid.

⁹ No jurisdictions were reimbursed in the 4th quarter of FY 2004 because no funds were available. In addition, for the quarters ended December 31, 2004, March 31, 2005, June 30, 2005, September 30, 2005, December 31, 2005, March 31, 2006, June 30, 2006, and September 30, 2006, SWBPI recipients received pro-rata reimbursements of 49.29 percent, 44.08 percent, 47.40 percent, 50.16 percent, 53.18 percent, 47.61 percent, 43.09 percent, and 44.05 percent respectively.

external audits could have been avoided if OJP required applicants to submit supporting documents.¹⁰ Additionally, OJP does not review SWBPI reimbursement applications for accuracy or conduct any monitoring activities of recipients to determine the eligibility of cases submitted for reimbursement.

In our judgment, OJP must require SWBPI recipients to submit a list of cases in support of the reimbursement requests. This list should include sufficient information to verify the eligibility of the cases submitted for reimbursement, including: (1) case number, (2) defendant name, (3) arrest date, (4) disposition date, (5) initiating federal law enforcement agency, and (6) referring federal agency. Additionally, for pre-trial detention reimbursements the case list should include the defendant booking date and release date. This is consistent with the requirements of other reimbursement programs administered by OJP, such as the State Criminal Alien Assistance Program (SCAAP), which requires a list of inmates, identifying information, and the length of detention.

Additionally, OJP should review reimbursement requests and the supporting case list to ensure that the number of cases submitted for reimbursement is accurate and that all cases submitted are eligible for reimbursement. Further, OJP should conduct monitoring activities of SWBPI recipients.

Reimbursement Not Linked To Actual Costs

We found that reimbursements were not based on actual costs incurred by the jurisdictions to prosecute federally declined-referred criminal cases. We asked OJP officials to provide information on the methodology used to develop the reimbursement categories and corresponding amounts. However, they were unable to provide us with information regarding the basis used in establishing the reimbursement amounts.

We also conducted limited testing at the seven SWBPI recipients included in our audit to determine the correlation between reimbursement categories and actual costs for prosecution and detention. Based on our analysis, we found that SWBPI recipients received reimbursements totaling \$49.78 million in excess of supported annualized costs. The significant amount of SWBPI reimbursements in excess of supported costs was

¹⁰ It should be noted that the dollar-related findings identified in our reviews of the seven SWBPI recipients were addressed in separate external audit reports. Thus, we are not offering any recommendations in this report specific to the \$15.57 million in unallowable and unsupported reimbursements and \$27,500 in funds to be put to better use.

predominately due to the fact that none of the jurisdictions included in our audit tracked or maintained data supporting the costs associated with prosecuting SWBPI cases. However, each jurisdiction was able to provide documentation to support their actual cost per day for pre-trial detention services. As a result, we were able to calculate the actual annualized pre-trial detention costs for SWBPI cases.

Pursuant to the FY 2002 Appropriations Act and all subsequent DOJ appropriations, SWBPI is intended to reimburse states and localities for prosecution and pre-trial detention costs associated with federally initiated criminal cases. Accordingly, on each SWBPI application the recipient certified that total federal reimbursements did not exceed 100 percent of actual prosecution and pre-trial detention costs for SWBPI cases. Nevertheless, as noted above, we found that SWBPI recipients received reimbursements of \$49.78 million in excess of supported costs. In our judgment, this is inconsistent with a statutory scheme that is intended to reimburse recipients for actual costs.

In our view, OJP should obtain sufficient cost data from each SWBPI recipient to ensure that reimbursements are linked to actual costs associated with SWBPI cases. We do not believe it necessary for SWBPI recipients to create elaborate cost accounting systems to determine the actual costs for each case. However, each recipient should at least track and maintain sufficient data on the costs associated with SWBPI cases to support its certification that total federal funds received do not exceed 100 percent of the annualized costs for its SWBPI cases. This is consistent with the requirements of other reimbursement programs administered by OJP, such as SCAAP, which requires that recipients provide actual cost information to determine the per day reimbursement rate.

We also found the reimbursements were not linked to actual costs because of the current policy of basing reimbursements for cases submitted under the "both" prosecution and pre-trial detention category on the number of days to prosecute the case, regardless of the length of time the defendant was detained. Our analysis of cases submitted under the over-90 day "both" category revealed that on average pre-trial detention services for 69 percent of these cases would have been reimbursed at a lesser amount based on the number of days the defendant was detained.

Additionally, prosecution services are reimbursed at the same amounts as pre-trial services, even though there is no evidence that prosecution and pre-trial detention costs are similar and therefore should be reimbursed at the same rate. Further, there is no evidence that these amounts accurately

reflect the actual average prosecution and detention costs for each Southwest Border jurisdiction.

As stated previously, none of the seven jurisdictions included in our audit tracked the costs to prosecute SWBPI cases. However, we were able to obtain the daily pre-trial detention costs for six of the seven jurisdictions.¹¹ Based on our analysis of the daily pre-trial detention rates, we determined that daily detention rates among the six jurisdictions ranged from \$110.69 per day in San Diego, to \$46.00 per day in Brooks County, a difference of \$64.69 per day. We also found that the average daily detention reimbursement rate among the six jurisdictions included in our audit was \$71.57. However, the average daily SWBPI detention reimbursements for the 1 to 15, 16 to 30, and 31 to 90 day reimbursement categories are \$206.98, \$112.79, and \$67.97 respectively, which in general is significantly higher than the actual average daily detention rates for the SWBPI recipients.

SWBPI reimbursements are also based on the number of days the case was open rather than the time and effort spent on prosecuting the case which, in our judgment, does not accurately reflect actual prosecution costs because SWBPI cases vary in complexity. For example, in a simple case related to the possession of a controlled substance by a sole defendant, the prosecutor may expend very little time and effort, compared to a complex case with multiple defendants that may involve significantly more time and effort on the part of the prosecutor. However, the trial date for both cases may be set for more than 90 days after the defendant was arrested. Therefore, both cases would be reimbursed at the "over 90 day" rate, even though the actual costs associated with prosecuting the cases were vastly different.

Finally, in our judgment using the number of days the defendant is detained is an accurate measure of the pre-trial detention costs for SWBPI cases. However, because SWBPI reimbursements are based on a broad range of days rather than the actual number of days, generally reimbursements for pre-trial detention services far exceed actual costs. For example, for pre-trial detention only cases that fall into the 1 to 15 day reimbursement category, the daily pre-trial detention reimbursements range from \$625 per day to \$83 per day; the daily pre-trial detention reimbursements for the 16 to 30 day category range from \$156 per day to \$83 per day; and the daily pre-trial detention reimbursements for the 31 to 90 day category range from \$121 per day to \$42 per day depending on the

¹¹ We did not obtain daily pre-trial detention costs from the New Mexico DPS because it only submits reimbursement requests for prosecution services.

number of days the defendant was actually detained. However, the average daily detention rate for the jurisdictions included in our audit was \$71.57 per day. Therefore, using the broad range of days rather than the actual number of days for SWBPI pre-trial detention reimbursements can result in reimbursements far in excess of actual costs.

In sum, as a result of not linking reimbursement rates to actual costs, jurisdictions may receive reimbursements in excess of their actual costs. As of the 4th quarter of FY 2006, SWBPI applicants only received 44 percent of the maximum reimbursement amount because reimbursement requests exceeded available funding.¹² If OJP ensured that only eligible cases were reimbursed and reimbursements were linked to the actual costs to prosecute and detain SWBPI defendants, additional funds would be available to more fully reimburse actual costs for eligible cases.

Additional Federal Programs with Overlapping Objectives

At the time the SWBPI reimbursement applications are submitted, the jurisdiction's CEO or designee is required to certify that the SWBPI claim has been adjusted to account for additional prosecution and pre-trial detention funding received through other federal programs. We found that only one of the seven jurisdictions included in our audit took steps to adjust their claims to account for additional funding from overlapping federal programs, and that OJP has not taken action to identify potential duplicate funding between the SWBPI program and other federal programs.

We identified three major federal programs that provide funding to state and local jurisdictions for prosecution and detention services, each of which may partially duplicate funding provided through the SWBPI program. These programs are ONDCP High Intensity Drug Trafficking Area (HIDTA) Drug Prosecution Initiatives, OJP's Edward Byrne Memorial Justice Assistance Grant Program (Byrne Grant Program), and the Department of Homeland Security, Bureau of Immigration and Customs Enforcement (DHS ICE), SCAAP.¹³

¹² No jurisdictions were reimbursed in the 4th quarter of FY 2004 because no funds were available. In addition, for the quarters ended December 31, 2004, March 31, 2005, June 30, 2005, September 30, 2005, December 31, 2005, March 31, 2006, June 30, 2006, and September 30, 2006, SWBPI recipients received pro-rata reimbursements of 49.29 percent, 44.08 percent, 47.40 percent, 50.16 percent, 53.18 percent, 47.61 percent, 43.09 percent, and 44.05 percent respectively.

¹³ The Violence Against Women and Department of Justice Reauthorization Act of 2005 merged the Byrne Grant Program with the Local Law Enforcement Block Grant Program (LLEBG) to create the Edward Byrne Memorial Justice Assistance Grant Program.

Federal Prosecution Funding

In addition to SWBPI reimbursements, we determined that six of the seven jurisdictions included in our audit also received HIDTA, Byrne grant, and other federal prosecution funds totaling \$27 million during the review period, as shown in Table 3.¹⁴

TABLE 3.
PROSECUTION GRANTS RECEIVED BY SWBPI RECIPIENTS
(DOLLARS IN MILLIONS)

| SITE | HIDTA | BYRNE | OTHER | TOTAL |
|-----------------|----------------|----------------|----------------|----------------|
| El Paso County | \$ 2.28 | - | \$ 2.07 | \$ 4.35 |
| New Mexico DPS | 2.64 | - | 6.07 | \$ 8.71 |
| Maricopa County | 1.64 | 4.70 | - | \$ 6.34 |
| Yuma County | 1.64 | 1.78 | - | \$ 3.41 |
| San Diego | 2.40 | - | 0.13 | \$ 2.52 |
| San Francisco | - | 1.86 | - | \$ 1.86 |
| Brooks County | - | - | - | - |
| TOTAL | \$10.60 | \$ 8.34 | \$ 8.27 | \$27.19 |

Source: OJP, ONDCP, and SWBPI recipients

With the exception of El Paso County, none of the six other jurisdictions included in our audit took steps to ensure that the SWBPI reimbursements, when combined with additional federal funding received for prosecution and pre-trial detention services, did not exceed the cost to prosecute the SWBPI cases. Although El Paso County did not track its costs to prosecute SWBPI cases, it deducted \$1.51 million from its SWBPI reimbursement requests in an attempt to ensure that federal funding did not exceed 100 percent of the costs to prosecute the SWBPI case.

¹⁴ The other grants are Criminal Enterprise Unit Grant, Drug Prosecution Grant, Rural Domestic Violence Grant, and the Community Gun Violence Program.

Federal Detention Funding

OJP also administers SCAAP in conjunction with the DHS ICE. SCAAP provides federal payments to states and localities that incur correctional officer salary costs for incarcerating undocumented criminal aliens. Since the SWBPI program also includes reimbursement for pre-trial detention services, we looked at the possibility of duplicate funding between SCAAP and the SWBPI.

We found that four of the seven jurisdictions included in our audit received SCAAP funds totaling \$95,559 for pre-trial detention services provided in SWBPI cases submitted for reimbursement.¹⁵ However, we found that none of the jurisdictions had taken any action to ensure they were not receiving duplicate SCAAP funds for these same cases.

In our judgment, the jurisdictions included in our audit made unsupported certifications in each quarterly SWBPI reimbursement application because they did not adjust their claims to account for the total additional funding received through other federal reimbursement or grant programs.¹⁶

We met with OJP officials to discuss the possibility of duplicate funding between the SWBPI program and other federal programs that provide funding for prosecution and pre-trial detention services. Based on our discussion, we found that OJP has not taken any action to identify any potential duplicate funding between the three programs. Specifically, the OJP official responsible for both the SWBPI program and SCAAP stated that there is not enough information collected from the SWBPI reimbursements to identify any such duplicate funding.

In our opinion, OJP should ensure that recipients make the necessary adjustments to the SWBPI applications to account for other federal prosecution and pre-trial detention funding. In addition, OJP should review

¹⁵ We did not analyze possible duplicate SCAAP funding for the New Mexico DPS because it only submits reimbursement requests for prosecution services. As a result, our audit only included SWBPI reimbursements for prosecution services. SWBPI pre-trial detention reimbursement requests are submitted through the State of New Mexico's counties. Also, we did not analyze possible duplicate funding for Brooks County or San Francisco. Brooks County did not receive SCAAP funding between FYs 2002 through 2006 and San Francisco did not provide a listing of SWBPI cases submitted for reimbursements.

¹⁶ Although El Paso County did not track its costs to prosecute SWBPI cases, it deducted \$1.51 million from its SWBPI reimbursement requests in an attempt to ensure that federal funding did not exceed 100 percent of the costs to prosecute the SWBPI case. However El Paso County did not make any adjustments for SCAAP payments they received.

SWBPI reimbursement applications to identify potential duplicate funding requests.

Allowability of Reimbursements

We conducted seven external audits of individual SWBPI recipients to determine if SWBPI reimbursements were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program. Our audits covered SWBPI reimbursements totaling \$55.11 million and identified unallowable and unsupported SWBPI reimbursements of \$15.57 million, which equates to 28 percent of the total reimbursements.¹⁷ In our judgment, the significant amount of dollar-related findings identified during our audits of SWBPI recipients is due in part to the fact that OJP is not adequately monitoring the SWBPI program. Specifically,

- Reimbursement requests were not always supported by the master case list resulting in excess reimbursements totaling \$5.92 million.¹⁸
- 339 cases were submitted for reimbursement in the wrong quarter resulting in questioned costs of \$793,933.
- 1,637 cases were not eligible for reimbursement, resulting in questioned costs totaling \$8.28 million and funds to be put to better use totaling \$27,500, as shown in Table 4.

¹⁷ In addition, we identified funds to be put to better use totaling \$27,500 related to unsupported and ineligible cases submitted for reimbursement that had not yet been paid. The questioned costs of \$15.57 million and funds to be put to better use of \$27,500 were previously addressed in our external audit reports on the seven SWBPI recipients included in our audit.

¹⁸ Of the \$5.92 million in excess reimbursements, \$5.41 million was specific to San Francisco. Although, San Francisco provided two separate lists in support of the SWBPI cases submitted for reimbursement, according to San Francisco officials neither list was representative of the SWBPI cases submitted for reimbursement because the SWBPI submissions were not based on actual cases. As a result, we found that all of the SWBPI reimbursements submitted by San Francisco were not supported.

**TABLE 4.
SUMMARY OF FINDINGS FROM PRIOR OIG SWBPI AUDITS**

| | NOT FEDERALLY INITIATED | RECORD RETENTION PROBLEMS | DUPLICATE DEFENDANT SUBMITTED | DEFENDANT NOT DETAINED OVERNIGHT | TOTALS |
|---------------------------------|-------------------------------|---------------------------------|-------------------------------------|---|--------------------|
| TOTAL NUMBER OF CASES | 985 | 208 | 142 | 302 | 1,637 |
| TOTAL QUESTIONED COSTS | \$5,164,302 | \$826,003 | \$888,517 | \$1,399,134 | \$8,277,956 |
| TOTAL FUNDS TO BETTER USE | \$ 17,500 | \$ 10,000 | 0 | 0 | \$ 27,500 |

Source: Prior OIG SWBPI audits

This finding further demonstrates that OJP should require SWBPI recipients to submit a list of cases in support of reimbursement requests. Additionally, OJP should review reimbursement requests and the supporting case list to ensure that the number of cases submitted for reimbursement is accurate and that all cases submitted are eligible for reimbursement.

Finally, at each of the seven sites included in our audit, we asked the responsible officials for feedback on OJP's administration of the SWBPI program. Officials in all seven jurisdictions stated that OJP has not provided any training on the SWBPI guidelines.

Based on the results of our external audits and the comments we received from the seven jurisdictions, OJP needs to provide training to the participating jurisdictions to help clarify the requirements of the SWBPI program.

Recommendations

The OIG made 13 recommendations to improve OJP's management of the SWBPI program to ensure that:

- reimbursement requests only include eligible cases;
- reimbursement amounts are linked to actual costs; and

- reimbursements do not exceed actual costs and are adjusted to reflect other federal prosecution and detention funding received by SWBPI participants.

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SOUTHWEST BORDER PROSECUTION INITIATIVE REIMBURSEMENT PROGRAM

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INTRODUCTION

The U.S. border with Mexico extends nearly 2,000 miles along the southern borders of California, Arizona, New Mexico, and Texas. The Department of Homeland Security, U.S. Customs and Border Protection, is the federal agency with primary responsibility to detect and prevent illegal entry into the United States. In Fiscal Year (FY) 2006, U.S. Customs and Border Protection processed an average of 1.1 million passengers and pedestrians, and 70,900 truck, rail, and sea containers entering the United States each day. Additionally, on a typical day in FY 2006, U.S. Customs and Border Protection executed an average of 2,984 apprehensions for illegal entry into the United States, made 63 arrests at the ports of entry, and seized 5,557 pounds of narcotics.

While U.S. Customs and Border Protection has the responsibility of guarding the national borders, the Department of Justice (DOJ) also plays a vital role in protecting the United States through prosecution, detainment, and incarceration of those individuals who violate federal criminal laws. As a result, drug cases resulting from the illegal importation of controlled substances at U.S. borders were typically prosecuted exclusively by U.S. Attorneys in federal courts.

Background

The Southwest Border Prosecution Initiative (SWBPI) provides funding to state, county, parish, tribal, and municipal governments for costs associated with the prosecution and pre-trial detention of these federally initiated criminal cases that are declined by the U.S. Attorneys offices and referred to state and local jurisdictions for prosecution. In late 1994, the U.S. Attorneys and state and local prosecutors began establishing partnerships through which the federal government referred to state and local governments criminal drug cases involving the illegal importation of controlled substances at the Southwest Border, known as federally declined-referred criminal cases.¹⁹ These partnerships allowed the U.S. Attorneys to focus on addressing major drug trafficking organizations and prosecuting deported criminal aliens who illegally returned to the United States. However, as state and local governments began to prosecute a growing number of federally declined-referred criminal cases, these entities experienced an increasing burden on their financial and personnel resources.

¹⁹ Declined-referred is a term used in the SWBPI guidelines to refer to a point in time during a federal investigation when a U.S. Attorney or federal law enforcement official decides not to pursue federal criminal charges against a defendant (declination) and requests that a state or local jurisdiction prosecute the defendant for violating state or local criminal statutes (referral).

In FYs 1998 and 1999, the counties along the Southwest Border, initiated by El Paso County, Texas, began notifying the U.S. Attorneys' Offices (USAO) and the Executive Office for United States Attorneys (EOUSA) that they would no longer be able to prosecute federally declined-referred criminal cases unless they received federal funds to help support these efforts. As a result, in FY 2001 Congress appropriated \$24 million dollars ". . . to reimburse county and municipal governments only for Federal costs associated with the handling and processing of illegal immigration and drug and alien smuggling cases."²⁰ The reimbursement program was initially administered by the Executive Office for United States Attorneys (EOUSA).

Executive Office for United States Attorneys

EOUSA was created to provide a liaison between DOJ and the 93 U.S. Attorneys located throughout the 50 states, the District of Columbia, Guam, the Northern Marianas Islands, Puerto Rico, and the U.S. Virgin Islands.

EOUSA received \$12 million in FY 2001 to reimburse county and municipal governments in California, Texas, Arizona, and New Mexico for handling and processing federally initiated drug cases along the Southwest Border. EOUSA provided each state with an equal share of funds to cover costs associated with court costs, administrative staff, courtroom technology, and the building of holding spaces. The original appropriation was supplemented, later in FY 2001, by an additional \$10 million to Texas and \$2 million to Arizona, and the legislation authorized reimbursements directly to the State of New Mexico.

In FY 2002, management of the SWBPI program was transferred to the Office of Justice Programs (OJP). Specifically, the 2002 Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act (FY 2002 Appropriations Act) authorized "\$50,000,000 for the Southwest Border Prosecutor Initiative . . . to reimburse state, county, parish, tribal, or municipal governments only for federal costs associated with the prosecution of criminal cases declined by local U.S. Attorneys Offices."²¹

²⁰ Pub. L. No. 106-246 (2001).

²¹ Pub. L. No. 107-77 (2001).

Office of Justice Programs

According to its website, OJP provides federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist crime victims. OJP carries out this mission by forming partnerships with other federal, state, and local agencies, as well as national community based organizations. OJP programs seek to address crime, substance abuse, family violence, youth crime, crime victims, and law enforcement initiatives.

The Bureau of Justice Assistance (BJA), a component of OJP, administers the SWBPI program. Its stated mission is to provide leadership and assistance to local criminal justice strategies to make U.S. communities safer. To accomplish its mission, BJA provides funding, training, technical assistance, and information to state and community criminal justice programs and emphasizes the coordination of federal, state, and local efforts.

As of February 1, 2008, the SWBPI program provided reimbursements to 82 state, county, parish, tribal, and municipal governments for 41,567 cases totaling over \$161 million. Total SWBPI reimbursements received by the four Southwest Border states are shown in Table 1, and a detailed listing of SWBPI reimbursements for each SWBPI recipient is shown in Appendix III.²²

TABLE 1.
SWBPI REIMBURSEMENTS (DOLLARS IN MILLIONS)²³

| STATES | FY02 | FY03 | FY04 | FY05 | FY06 | TOTALS |
|---------------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| Arizona | \$ 3.00 | \$ 3.41 | \$ 2.14 | \$ 1.70 | \$ 2.70 | \$ 12.95 |
| California | 18.45 | 15.63 | 12.78 | 13.00 | 16.32 | 76.19 |
| New Mexico | 5.75 | 8.45 | 6.54 | 6.26 | 3.59 | 30.58 |
| Texas | 11.77 | 11.07 | 6.82 | 7.04 | 4.71 | 41.41 |
| SWBPI Totals | \$38.97 | \$38.55 | \$28.28 | \$28.00 | \$27.33 | \$161.13 |

Source: Office of Justice Programs

²² OJP has accepted applications for all the quarters of FY 2007, but as of January 31, 2008 had not yet made any reimbursements for FY 2007 SWBPI submissions. Therefore, FY 2006 was the most recent data available.

²³ Throughout this report, differences in the total amounts are due to rounding.

SWBPI Guidelines

Eligible SWBPI participants submit quarterly electronic applications for reimbursement through BJA's SWBPI website. On the reimbursement applications, SWBPI applicants are required to list the total number of cases in each of three major categories based on the types of services provided: (1) prosecution only, (2) pre-trial detention only, and (3) both prosecution and pre-trial detention. The three major service categories are further broken down into four reimbursement categories based on the length of disposition: (1) 1 to 15 days, (2) 16 to 30 days, (3) 31 to 90 days, and (4) over 90 days.²⁴

BJA does not require SWBPI applicants to provide documentation supporting the number of cases submitted for reimbursement through the electronic application. However, jurisdictions that receive SWBPI funds are required to retain documentation supporting the reimbursement requests for 3 years from the date the application was approved.

Reimbursement Amounts

Each eligible case may receive the following maximum reimbursement, based upon length of disposition, availability of funds, and the provision of both prosecution services and pre-trial detention services.

**TABLE 2.
MAXIMUM SWBPI REIMBURSEMENTS**

| LENGTH OF DISPOSITION | MAXIMUM REIMBURSEMENT |
|------------------------------|------------------------------|
| 1 to 15 Days | \$ 2,500 |
| 16 to 30 Days | 5,000 |
| 31 to 90 Days | 7,500 |
| Over 90 Days | 10,000 |

Source: OJP

To calculate the reimbursement amount for cases submitted for both prosecution and pre-trial detention services, the length of the prosecution takes precedence in determining a case's disposition category.

²⁴ Case disposition is the length of time between a suspect's arrest and the resolution (e.g., dismissal, plea, conviction) of the criminal charges through a county or state judicial process.

For prosecution only cases, each eligible case may receive 50 percent of the maximum reimbursement. To be eligible for 50 percent of the maximum per case reimbursement for prosecution only, an eligible jurisdiction must provide one or more of the following for each case: (1) judicial services, (2) prosecution services, or (3) defense services.

For pre-trial detention only cases, each eligible case may receive 50 percent of the maximum reimbursement. To be eligible for 50 percent of the maximum reimbursement for pre-trial detention only, an eligible jurisdiction must have held the case defendant overnight for 1 or more days in a secure facility. Pre-trial detention services do not include incarceration time for sentenced offenders.

According to SWBPI guidelines, SWBPI reimbursements received by state, county, parish, tribal, and municipal governments may be used for any lawful purpose that is in the best interest of the jurisdiction.

The first five SWBPI application periods (from October 1, 2001, to March 31, 2004) were reimbursed at 100 percent of the maximum amount requested. OJP did not make any reimbursements for the 4th quarter of FY 2004 because all of the SWBPI funds appropriated for the fiscal year had already been disbursed. As a result, beginning in FY 2005 BJA officials divided the funds across each quarter with each jurisdiction receiving an equal percentage of the amount determined available for each quarter.²⁵

Case Eligibility

To be eligible for reimbursement under the SWBPI program, each case submitted must meet the following criteria.

- **The case must be federally initiated.** A federally initiated case results from a criminal investigation or an arrest involving federal law enforcement authorities for a violation of federal criminal law. This may include investigations resulting from multi-jurisdictional task forces.

²⁵ For the 3rd quarter of FY 2004, San Diego, California, and Brooks County, Texas, received 100-percent reimbursement while the remaining five sites included in our audit received 81 percent reimbursement. For the quarters ended December 31, 2004, March 31, 2005, June 30, 2005, September 30, 2005, December 31, 2005, March 31, 2006, June 30, 2006, and September 30, 2006, SWBPI recipients received pro-rata reimbursements of 49.29 percent, 44.08 percent, 47.40 percent, 50.16 percent 53.18 percent, 47.61 percent, 43.09 percent, and 44.05 percent, respectively.

- **The case must be declined and referred.** This occurs when a U.S. Attorney or federal law enforcement official decides not to pursue federal criminal charges against a defendant (declination) and requests that a state or local jurisdiction prosecute the defendant for violating state or local criminal statutes (referral). Referred cases are eligible for SWBPI reimbursement regardless of whether the case was formally declined and referred by a U.S. Attorney, or through a blanket declination-referral policy, an “accepted federal law enforcement practice,” or by federal prosecutorial discretion.²⁶
- **The case must be prosecuted by a state or local jurisdiction.** If the state or local jurisdiction reviews the case but decides not to prosecute, then the case is not eligible for reimbursement.
- **The case must be disposed of during an eligible reporting period.** The eligible reporting period is the quarter in which the case was disposed and case disposition refers to the time between a suspect’s arrest and the resolution (e.g., dismissal, plea, conviction, etc.) of the criminal charges through a county or state judicial or prosecutorial process. Disposition does not include incarceration time for sentenced offenders or time spent by prosecutors on judicial appeals.

Public Law 106-246 provided FY 2001 funding to state, county, parish, tribal, and municipal governments to reimburse them for costs associated with the prosecution and pre-trial detention of federally initiated illegal immigration and drug and alien smuggling cases that were declined by the U.S. Attorneys offices and instead referred to state and local jurisdictions. However, none of the subsequent appropriations limit the types of federally initiated cases that are allowable for reimbursement. As a result, any federally initiated case that is declined by the U.S. Attorneys offices and subsequently prosecuted by an eligible state or local jurisdiction is allowable for reimbursement.

Additionally, the jurisdiction’s Chief Executive Officer (CEO) or designee must certify for quarterly SWBPI applications that the “application does not contain payment claims for cases already fully reimbursed by

²⁶ An accepted federal law enforcement practice is an understanding between the federal law enforcement agencies and the USAO. Declination-referrals through an accepted federal law enforcement practice result from the fact that through communication federal law enforcement agencies obtain an understanding of which cases the USAO will or will not prosecute. Through this understanding, those cases that federal law enforcement agencies know the USAO will not prosecute are referred directly to the state or local jurisdiction without obtaining a declination from the USAO.

federal funds, or when combined with other federal reimbursement, grant, or payment funds, does not make payment claims in excess of 100 percent of the cost of prosecuting and or detaining case defendants in the reporting period." The SWBPI guidelines also state that, at "submission, the CEO or designee certifies that the total application amount, when combined with other federal funds . . . does not exceed 100 percent of the jurisdiction's annualized costs for prosecution and or pre-trial detention services."

We found that there is a discrepancy between the certification on the SWBPI application and the certification requirement in the SWBPI guidelines. The application requires that federal funds cannot exceed 100 percent of the costs for the reporting period (i.e., the quarter) while the guidelines require that federal funds cannot exceed 100 percent of the annualized costs. Additionally, it is unclear whether or not prosecution and pre-trial detention costs should be considered separately or combined when determining if federal funds exceed costs. As a result, in conducting our audit we used the least restrictive interpretation of the guidelines and considered that federal funds cannot exceed the combined annualized prosecution and pre-trial detention costs for SWBPI cases.

Recent Guidance

Our audit generally covered SWBPI reimbursements awarded from FYs 2002 through 2006. To assess the program, we used the SWBPI guidelines in effect during the period covered by our audit. However, it should be noted that in July 2007 OJP updated the SWBPI guidelines and made the following changes.

- The new guidelines no longer state that recipients cannot receive reimbursements in excess of 100 percent of their actual annualized costs. Nonetheless, at the time SWBPI reimbursement applications are submitted the jurisdiction's CEO or designee is still required to certify that "This application does not contain payment claims for cases already fully reimbursed by federal funds, or when combined with other federal reimbursement, grant, or payment funds, does not make payment claims in excess of 100 percent of the cost of prosecuting and or detaining case defendants in the reporting period."
- The July 2007 guidelines do not contain the statement that when a case is submitted under the "both" category, the prosecution timeline takes precedence in determining the case reimbursement category. However, the OJP application still allows for cases to be submitted under the "both" category rather than requiring that prosecution and pre-trial detention reimbursements be submitted separately.

- The July 2007 guidelines specify that new cases resulting from probation or parole violations and revocation hearings resulting from a previously reimbursed SWBPI case are not eligible for reimbursement. Further, extradition cases are also not eligible for reimbursement. Although none of these types of cases would have been eligible for reimbursement under the previous guidelines the revised guidelines ensure that jurisdictions are aware of the fact that these types of cases are ineligible.

Additional Federal Prosecution and Detention Funding

We identified three major federal programs that provide funding to state and local jurisdictions for prosecution and detention services that may partially duplicate the objectives of the SWBPI program. These programs are the Office of National Drug Control Policy's (ONDCP) High Intensity Drug Trafficking Area (HIDTA) Drug Prosecution Initiatives, OJP's Edward Byrne Memorial Justice Assistance Grant Program (Byrne Grant Program), and the U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (DHS ICE) State Criminal Alien Assistance Program (SCAAP).

High Intensity Drug Trafficking Area Drug Prosecution Initiatives

HIDTA provides assistance to federal, state, and local law enforcement entities operating in areas most adversely affected by drug trafficking. In FY 2006, HIDTA funding totaled \$224.7 million, of which \$7 million was budgeted for locally designed strategies for prosecution. The HIDTA Prosecution Initiative is an optional initiative for local HIDTAs to provide state and local governments funding to cover salaries and some fringe benefits for prosecutors to work on HIDTA cases. The possibility for duplicate funding occurs when HIDTA drug cases prosecuted fully or in part by a HIDTA-funded prosecutor are submitted for SWBPI reimbursement.

Edward Byrne Memorial Justice Assistance Grant Program

The Byrne Grant Program is a partnership among federal, state, and local governments to create safer communities. BJA is authorized to award grants to states for use by states and units of local government to improve the functioning of the criminal justice system, with emphasis on violent crime and serious offenders. The Byrne Grant Program allows states, tribes, and local governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions. The Byrne Grant Program affords agencies the flexibility to prioritize and place justice funds where they are needed most. The possibility for duplicate funding

occurs when jurisdictions receive both SWBPI prosecution reimbursements and Byrne prosecution funds for the same case.

State Criminal Alien Assistance Program

BJA administers SCAAP in conjunction with the DHS ICE. SCAAP provides federal payments to states and localities that incurred correctional officer salary costs for incarcerated undocumented criminal aliens. To apply for SCAAP funding, the jurisdictions must submit inmate data files including identifiable information on the inmate, which is used to determine SCAAP eligibility for each inmate. The total inmate days and total correctional officer salary costs are utilized in determining the per diem cost used to calculate inmate reimbursements. SWBPI recipients are encouraged to apply for SCAAP funding with the knowledge that the total application amount, when combined with other federal funds provided to the jurisdiction for that reporting period, does not exceed 100 percent of the jurisdiction's annualized costs for pre-trial detention services. The possibility for duplicate funding occurs when jurisdictions receive both SWBPI pre-trial detention reimbursements and SCAAP funding for the same incarcerated undocumented criminal alien.

Prior Reports

Prior to the initiation of this audit, the OIG conducted three audits of individual SWBPI recipients to determine if SWBPI reimbursement requests submitted by the jurisdictions were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program. The three audits examined the: (1) New Mexico Department of Public Safety (New Mexico DPS); (2) Yuma County Attorney's Office, Arizona (Yuma County); and (3) Maricopa County Attorney's Office, Arizona (Maricopa County).²⁷ These SWBPI audits revealed dollar-related findings totaling over \$1.6 million. Specifically, the prior reviews identified the following.

- The New Mexico DPS received reimbursements totaling \$1,098,036 for ineligible cases. Additionally, the New Mexico DPS did not adequately monitor the state judicial districts' requests for reimbursements to ensure the cases were allowable, supported, and in compliance with the SWBPI guidelines, and did not require the state judicial districts to sign assurances as to the accuracy of requests for reimbursement.

²⁷ Our audit of the New Mexico DPS included the 2nd, 3rd, and 11th Judicial Districts.

- Yuma County received reimbursements totaling \$84,191 for ineligible cases and \$200,147 for unsupported cases. It also requested reimbursements totaling \$17,500 for ineligible cases that had not yet been paid. Further, Yuma County did not maintain a list of cases supporting the reimbursements requested.
- Maricopa County received reimbursements totaling \$16,409 for ineligible cases and \$176,948 for unsupported cases. It also requested reimbursements totaling \$10,000 for unsupported cases that had not yet been paid. Additionally, Maricopa County failed to maintain a number of supporting case files for the required 3-year record retention period.

Additionally, for the past 8 years grant management has been identified by the Office of the Inspector General (OIG) as one of DOJ's top 10 management and performance challenges. Specifically, the OIG has reported that grant management continues to be a challenge for the following reasons:

- OIG reviews continue to find that many grantees do not submit required financial and progress reports or do not submit them in a timely fashion;
- Numerous deficiencies continue to be found in DOJ's monitoring of grantee activities;
- OIG audits found that grant funds were not regularly awarded in a timely manner and that grantees were slow to spend available monies; and
- OIG audits of grants have resulted in significant dollar-related findings.

Although SWBPI is a reimbursement program rather than a grant program, in our judgment the same concerns related to OJP's management and oversight of the program exist.

Audit Approach

Our audit of the SWBPI program sought to:

- Evaluate OJP's administration and management of SWBPI reimbursements;

- Identify additional federal programs with overlapping objectives; and
- Determine if SWBPI reimbursement requests submitted by eligible jurisdictions are allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program.

The audit generally covered, but is not limited to, SWBPI reimbursements awarded from FYs 2002 through 2006. Audit work was conducted at OJP; ONDCP; the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); the Drug Enforcement Administration (DEA); the Federal Bureau of Investigation (FBI); EOUSA; and the following selected SWBPI recipients: (1) New Mexico DPS; (2) Yuma County; (3) Maricopa County; (4) El Paso County Auditor's Office, Texas (El Paso County); (5) San Diego District Attorney's Office, California (San Diego); (6) Brooks County, Texas (Brooks County); and (7) City and County of San Francisco, California (San Francisco). Additional information related to the audit objectives, scope, and methodology is contained in Appendix I.

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FINDINGS AND RECOMMENDATIONS

I. ADMINISTRATION AND OVERSIGHT OF REIMBURSEMENTS

Our audit results revealed that OJP is not adequately overseeing the SWBPI program. Applicants are not required to provide any documentation supporting reimbursement requests. In addition, OJP was not reviewing SWBPI reimbursement applications for accuracy and was not conducting any monitoring activities to determine the eligibility of cases submitted for reimbursement. Additionally, we found that approved reimbursements were not linked to actual costs incurred by the jurisdictions to prosecute federally declined-referred criminal cases. Moreover, none of the seven jurisdictions included in our audit maintained any documentation to support costs associated with SWBPI cases submitted for reimbursement. Our analyses determined that \$49.78 million in SWBPI reimbursements were in excess of supported annualized costs. Because SWBPI is intended to reimburse states and localities for costs they actually incur, in our judgment OJP needs to do more to ensure that claimed amounts are based on actual costs.

To be eligible for reimbursement under the SWBPI program, each case submitted must meet the following criteria.

- The case must be initiated by a federal law enforcement agency.
- The case must be declined for federal prosecution and referred to the local jurisdiction for prosecution.
- The case must be prosecuted by a state or local jurisdiction.
- The case must be disposed of during an eligible reporting period.

However, we found that OJP does not adequately oversee SWBPI reimbursements. Specifically, (1) no supporting documentation is required, (2) the applications are not reviewed for eligibility, and (3) no monitoring of SWBPI recipients occurs.

SWBPI Program Oversight

Supporting Documentation Not Required

Pursuant to the SWBPI guidelines, SWBPI applicants are required to list the total number of cases in each of the three major categories based on the types of services provided: (1) prosecution only, (2) pre-trial detention only, and (3) both prosecution and pre-trial detention. However, OJP does not require SWBPI applicants to provide documentation supporting the number of cases submitted for reimbursement through the electronic application. In our judgment, OJP cannot effectively oversee the SWBPI program without requiring the applicants to provide some documentation in support of reimbursement requests. Further, most of the unallowable and unsupported reimbursements totaling \$15.57 million, or 28 percent of the total reimbursements audited, identified in our seven external audits discussed in Finding III, could have been avoided if OJP required applicants to submit supporting documents.²⁸

At a minimum, OJP should require SWBPI recipients to submit a list of cases in support of the reimbursement requests. This list should include sufficient information to verify the eligibility of the cases submitted for reimbursement, including: (1) case number, (2) defendant name, (3) arrest date, (4) disposition date, (5) initiating federal law enforcement agency, and (6) referring federal agency. Additionally, for pre-trial detention reimbursements the case list should include the defendants booking and release dates. This is consistent with the requirements of other reimbursement programs administered by OJP, such as SCAAP that requires a list of inmate names, identifying information, and the length of detention.

Reimbursement Requests Not Reviewed

Without requiring, at a minimum, a list of cases submitted for reimbursement and information related to case eligibility, OJP is unable to review reimbursement applications for accuracy and to determine the eligibility of cases submitted for reimbursement.

In our judgment, in addition to requiring a list of cases in support of reimbursement requests, OJP should also review reimbursement requests

²⁸ It should be noted that the dollar-related findings identified in our reviews of the seven SWBPI recipients were addressed in separate external audit reports. Thus, we are not offering any recommendations in this report specific to the \$15.57 million in unallowable and unsupported reimbursements and \$27,500 in funds to be put to better use.

and the supporting case list to determine if the number of cases submitted for reimbursement is accurate and that all cases submitted are eligible for reimbursement. Again, this is consistent with the requirements of other reimbursement programs administered by OJP, such as SCAAP for which the reimbursement request is verified by DHS ICE to determine if the inmates are eligible for reimbursement in accordance with the SCAAP criteria.

Monitoring Activities Not Conducted

Although SWBPI recipients are required to maintain documentation supporting the reimbursement requests for 3 years from the date the application was approved, we found that OJP did not conduct any monitoring activities of SWBPI reimbursement recipients. For its traditional grant programs, OJP is required to devote resources to on-site monitoring reviews to verify that sufficient documentation is available to support grant-related activities and that progress is being made towards performance requirements. OJP is also required to conduct remote reviews of grantee information to verify the accuracy and quality of information submitted by grantees regarding financial and program activities. Although SWBPI is not a grant program, in our judgment the same concerns that the OIG has previously reported regarding OJP's management and oversight of grant programs applies to the SWBPI program.

In our judgment, OJP should conduct monitoring activities of SWBPI recipients to: (1) ensure compliance with the programmatic, administrative, and fiscal requirements of relevant statutes, regulations, policies, and guidelines; (2) provide guidance on OJP policies and procedures, program requirements, general federal regulations, and basic programmatic, administrative, and reporting requirements; and (3) identify and resolve problems that may impede the effective administration of the program.

OJP's policy to not require supporting documentation for reimbursement applications and its failure to perform monitoring activities of SWBPI participants place SWBPI funding at a high risk of misuse. We believe such conditions more easily allow for unsupported and unallowable requests for reimbursements.

External Audits Identified Unallowable and Unsupported Reimbursements

We conducted a series of seven audits covering SWBPI reimbursements totaling \$55.11 million awarded from FYs 2002 through 2006. The seven SWBPI recipients audited were: (1) New Mexico DPS; (2) Yuma County; (3) Maricopa County; (4) El Paso County; (5) San Diego (6) Brooks County; and (7) San Francisco. These audits revealed OJP does not adequately oversee the SWBPI program. We found unallowable and unsupported reimbursements totaling \$15.57 million, which equates to 28 percent of the total reimbursements audited. Additionally, we identified \$27,500 in funds to be put to better use.²⁹ Specifically, we identified:

- unsupported reimbursements totaling \$5.41 million for which the number of cases submitted on the electronic applications exceeded the number of cases on the detailed list provided by the recipient in our audit;
- 2,133 cases that were not eligible for reimbursement under the SWBPI guidelines received reimbursements, resulting in \$10.18 million in questioned costs and funds to be put to better use;
- two jurisdictions – Yuma County and San Francisco – did not maintain a list of cases submitted for reimbursement, and San Francisco's SWBPI submissions were based on estimates, not specific SWBPI eligible cases actually prosecuted.³⁰

The results of our audits are discussed in detail in Finding III. However, the significant dollar-related findings we identified further support our conclusion that OJP does not adequately oversee the SWBPI program.

SWBPI Reimbursement Not Linked to Actual Costs

We found that SWBPI reimbursement categories and corresponding reimbursement amounts were not based on actual costs. On each quarterly application the jurisdiction's CEO or designee must certify that the total application amount, when combined with other federal funding, does not

²⁹ The dollar-related findings identified in our reviews of the seven SWBPI recipients were addressed in separate external audit reports. Thus, we are not offering any recommendations in this report specific to the \$15.57 million in unallowable and unsupported reimbursements and \$27,500 in funds to be put to better use.

³⁰ San Francisco attempted to recreate a master case list, but upon reviewing a sample of cases we determined that none of the cases on the list were federally initiated. Yuma County was able to recreate a list of cases submitted for reimbursement.

exceed 100 percent of the jurisdiction's annualized costs for SWBPI prosecution and pre-trial detention services. Further, the CEO or designee must certify that the SWBPI claim has been adjusted to account for additional prosecution and pre-trial detention funding received through other federal programs.

We interviewed OJP officials to determine the basis for the reimbursement categories and corresponding reimbursement amounts. However, OJP could not provide documentation to demonstrate what actions were taken in creating the reimbursement categories and corresponding reimbursement amounts. Further, OJP was not able to provide documentation to support the basis for its uniform payment per case schedule. We also found that the OJP personnel responsible for administering the SWBPI program were not aware of the basis used in determining the reimbursement categories and amounts.

We were able to determine that during FYs 2000 and 2001 when the SWBPI program was administered by EOUSA, each participant was required to analyze actual costs in various categories and develop a unique, jurisdiction-specific cost per case as the basis for the reimbursement agreement. We consider this a best practice to ensure that reimbursements most accurately reflect actual costs.

However, according to correspondence provided to us by OJP from a former SWBPI official, when the administration of the SWBPI program was transferred to OJP, OJP planned to formulate the uniform cost-per-case reimbursement schedule. The reimbursement schedule was to be based upon information and feedback from U.S. Attorneys, and state and local criminal justice professionals.

Based on OJP's inability to provide any support or justification for its uniform payment per case schedule, we were concerned that the reimbursement categories and corresponding amounts may not accurately reflect the actual costs to prosecute and detain SWBPI defendants. This is particularly important because, as stated previously, the FY 2002 Appropriations Act and all subsequent appropriations identify SWBPI as a reimbursement program.

We conducted limited testing at the seven jurisdictions included in our audit to determine the correlation between reimbursement categories and actual costs for prosecution and detention. We found that reimbursements are not based on actual costs incurred by the jurisdictions to prosecute federally declined-referred criminal cases. Specifically, we found that:

- None of the seven jurisdictions included in our audit maintained any documentation to support prosecution and pre-trial detention costs for SWBPI cases. However, the jurisdictions were able to provide us with sufficient information to calculate pre-trial detention costs;
- Reimbursements for cases submitted under the “both” prosecution and pre-trial detention category are based on the number of days to prosecute the case, regardless of the length of time the defendant was detained;
- Prosecution services are reimbursed at the same amounts as pre-trial detention services, even though there is no evidence that these amounts accurately reflect the actual average prosecution and detention costs for each Southwest Border jurisdiction; and
- Reimbursements are based on the number of days the case was open rather than the time and effort spent on prosecuting the case.

As a result of not linking reimbursement rates to actual costs, jurisdictions may receive reimbursements in excess of their actual costs. In our judgment, this is inconsistent with the stated statutory goal of reimbursing jurisdictions for money actually expended. Moreover, as of the 4th quarter of FY 2006, SWBPI applicants only received 44 percent of the maximum reimbursement amount because reimbursement requests exceeded available funding, as shown in Table 3.

**TABLE 3.
PRO-RATA SWBPI REIMBURSEMENTS**

| QUARTER ENDED | PRO-RATA REIMBURSEMENTS |
|--------------------|-------------------------|
| December 31, 2004 | 49.29 % |
| March 31, 2005 | 44.08 % |
| June 30, 2005 | 47.40 % |
| September 30, 2005 | 50.16 % |
| December 31, 2005 | 53.18 % |
| March 31, 2006 | 47.61 % |
| June 30, 2006 | 43.09 % |
| September 30, 2006 | 44.05 % |

Source: OJP

In our opinion, if OJP ensured that only eligible cases were reimbursed and reimbursements were linked to the actual costs to prosecute and detain SWBPI defendants, additional funds would be available to more fully reimburse actual costs for eligible cases. These findings are discussed in detail in the following sections.

Reimbursements in Excess of Supported Costs

We conducted testing to calculate the actual annualized prosecution and pre-trial detention costs as compared to total SWBPI reimbursements to determine whether or not the jurisdictions received SWBPI reimbursements in excess of their actual costs. Based on our analysis we found that SWBPI recipients received reimbursements totaling \$49.78 million in excess of supported annualized costs, as shown in Table 4.³¹

³¹ See Appendix II for the detailed analysis for each site.

TABLE 4.
SWBPI REIMBURSEMENTS IN EXCESS OF SUPPORTED COSTS
(DOLLARS IN MILLIONS)³²

| SITE | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | TOTAL |
|--------------------------------|----------------|----------------|---------------|---------------|---------------|----------------|
| NEW MEXICO DPS | \$ 3.62 | \$ 4.87 | \$4.03 | \$4.41 | \$2.47 | \$19.41 |
| BROOKS COUNTY | 1.69 | 1.87 | .61 | 2.41 | .92 | 7.49 |
| SAN DIEGO | 3.41 | 2.19 | 2.02 | .38 | (.20) | 7.80 |
| EL PASO COUNTY | 1.84 | 2.07 | .68 | .87 | .83 | 6.29 |
| SAN FRANCISCO ³³ | - | - | .04 | 1.71 | 3.67 | 5.41 |
| YUMA COUNTY | .50 | .65 | .52 | .26 | .41 | 2.34 |
| MARICOPA COUNTY | .42 | .40 | .37 | (.05) | (.11) | 1.02 |
| TOTAL | \$11.48 | \$12.03 | \$8.27 | \$9.99 | \$8.00 | \$49.78 |

Scope: Data from New Mexico DPS, Brooks County, San Diego, El Paso County, San Francisco, Yuma County, and Maricopa County; and OIG analysis

The SWBPI reimbursements of \$49.78 million in excess of supported costs was predominately due to the fact that none of the jurisdictions included in our audit tracked or maintained data supporting the costs associated with prosecuting SWBPI cases. However, each jurisdiction was able to provide documentation to support their actual cost per day for pre-trial detention services. As a result, we were able to calculate the actual annualized pre-trial detention costs for SWBPI cases. As noted above, SWBPI is a reimbursement program and each SWBPI applicant certifies that total federal reimbursements do not exceed 100 percent of its actual prosecution and pre-trial detention costs for SWBPI cases.

In our opinion, OJP should obtain sufficient cost data from each SWBPI recipient to ensure that reimbursements are linked to actual costs associated

³² The analysis conducted does not include cases beyond the retention period for which supporting documentation was no longer available. Appendix II contains detailed analyses for each of the seven auditees.

³³ San Francisco did not participate in the SWBPI program until FY 2004. Further, San Francisco was unable to provide a list of cases submitted for reimbursement because its SWBPI submissions were not based on specific cases. As a result, we questioned the entire reimbursement received by San Francisco.

with SWBPI cases. We do not believe it is necessary for SWBPI recipients to create elaborate cost accounting systems to determine the actual costs for each case. However, each recipient should, at a minimum, track and maintain sufficient data on the costs associated with SWBPI cases to support the certification that total federal funds received do not exceed 100 percent of the annualized costs for its SWBPI cases. This is consistent with the requirements of other reimbursement programs administered by OJP such as SCAAP, which requires that recipients provide actual cost information to determine the per day reimbursement rate.

Specifically, SCAAP participants are required to submit actual cost data in order to participate in the reimbursement program. Each SCAAP participant receives reimbursements based on a per diem cost rate specific to each jurisdiction. The total inmate days and total correctional officer salary costs are utilized in determining the per diem cost used to calculate inmate reimbursements for SCAAP. The total inmate days are the cumulative number of consecutive detention days attributable to inmates housed in the jurisdiction's facilities during the reporting period. It includes all inmates regardless of their status, citizenship, disposition, or length of stay. Correctional officers include employees, officers, and contractual staff whose primary responsibility is the control, custody, or supervision of persons detained and incarcerated and their salary costs reflect the total salaries and wages paid to full and part-time correctional officers. The per diem cost is derived by dividing the jurisdiction's total inmate days into the total correctional officer salary costs. A hypothetical example is shown in Table 5.

**TABLE 5.
SAMPLE CALCULATION OF SCAAP RATES**

| | DAILY DETENTION RATE |
|---|---------------------------------|
| Total Salary Costs | \$50,000,000 |
| Divided By Total Inmate Days | 2,000,000 |
| <i>Equals Per Diem</i> | <i>\$25.00</i> |
| Total Inmate Days Eligible for Reimbursement | 200,000 |
| TOTAL REIMBURSEMENT | \$ 5,000,000 |

Source: OJP and OIG analysis

Analysis of SWBPI Reimbursements for the "Both" Category

Pursuant to SWBPI guidelines, reimbursements for cases submitted under the "both" prosecution and pre-trial detention category are based on the number of days to prosecute the case, regardless of the length of time the defendant was detained.

Based on our audits of SWBPI recipients, we determined that in many cases involving both prosecution and pre-trial detention services the defendant was only detained for a few days. If the pre-trial detention reimbursements for these cases were calculated separately, SWBPI jurisdictions would only have received up to \$1,250 for these cases. However, based on the guidelines in place during the period covered by our audit, if the length of disposition for prosecution was in the over 90 day category, the recipient received up to \$10,000 for the case (\$5,000 for prosecution and \$5,000 for pre-trial detention) even though the pre-trial detention services were for less than 15 days.

For five of the seven sites included in our audit, we analyzed all "both" cases submitted in the over-90 day category to determine the number of cases for which the pre-trial detention reimbursement would have been submitted in a different reimbursement category based on the length of detention.³⁴ We found that on average for 69 percent of the over 90 day "both" cases, pre-trial detention would have been reimbursed in a lesser category, as shown in Table 6.

³⁴ The New Mexico DPS was not included in our analysis because it only submits reimbursement requests for prosecution services. As a result, our audit only included SWBPI reimbursements for prosecution services. SWBPI pre-trial detention reimbursement requests for the State of New Mexico are submitted separately by the counties. Additionally, San Francisco was not included in our analysis because it was unable to provide a list of cases submitted for reimbursement since its SWBPI submissions were not based on specific cases.

**TABLE 6.
ANALYSIS OF PRE-TRIAL DETENTION FOR 91+ DAY BOTH CASES**

| | NO. OF 91+ DAY BOTH CASES | PERCENT OF CASES ACTUAL DETENTION IN 1-15 DAY CATEGORY | PERCENT OF CASES ACTUAL DETENTION IN 16-30 DAY CATEGORY | PERCENT OF CASES ACTUAL DETENTION IN 31-90 DAY CATEGORY | TOTAL PERCENT OF CASES ACTUAL DETENTION LESS THAN 91+ DAYS |
|-----------------------------|--|---|--|--|---|
| EL PASO Co. | 837 | 71.68 % | 7.65 % | 4.42 % | 83.75 % |
| BROOKS Co. | 664 | 65.36 % | 1.51 % | 0.15 % | 67.02 % |
| SAN DIEGO Co. | 511 | 43.84 % | 6.64 % | 9.98 % | 60.46 % |
| YUMA Co. | 157 | 35.03 % | 14.01 % | 5.10 % | 54.14 % |
| MARICOPA Co. | 252 | 26.59 % | 5.95 % | 17.86 % | 50.40 % |
| WEIGHTED AVERAGE | N/A | 57.00 % | 5.99 % | 5.87 % | 68.85 % |

Source: OJP, El Paso County, Brooks County, San Diego, Yuma County, Maricopa County, and OIG analysis

In summary, based on the number of days the defendant was detained in the five sites included in our analysis, the pre-trial detention reimbursements for 50 to 84-percent of the “both” cases submitted in the over 90 day reimbursement category, would have been submitted in a lower reimbursement category if the reimbursements were calculated separately. Therefore, using the “both” category does not accurately reflect pre-trial detention costs because reimbursements are based on the number of days to prosecute the case, regardless of the length of time the defendant was detained. As a result, these cases received excess reimbursements for pre-trial detention. In our judgment, OJP should eliminate the “both” category and reimburse prosecution and pre-trial detention costs separately.

In addition to the fact that the prosecution timeline takes precedence in determining the reimbursement category for the “both” cases, there is no evidence that prosecution and pre-trial detention costs are similar and should be reimbursed at the same rate.

Analysis of Reimbursements for Pre-Trial Detention

We found that pre-trial detention reimbursements do not accurately reflect the average daily detention costs for each Southwest Border jurisdiction. We obtained the daily pre-trial detention costs for six

jurisdictions included in our audit. From this data we determined that there was a wide range in the daily costs to detain defendants among the jurisdictions included in our audit, as shown in Table 7.³⁵

**TABLE 7.
FY 2006 SWBPI DAILY DETENTION RATES**

| JURISDICTION | DAILY DETENTION RATE |
|-----------------------|------------------------|
| San Diego | \$110.69 |
| San Francisco | 88.25 |
| Yuma County | 70.24 |
| El Paso County | 57.98 |
| Maricopa County | 56.23 |
| Brooks County | 46.00 |
| <i>Average</i> | <i>\$ 71.57</i> |

Scope: Brooks County, San Diego, El Paso County,
San Francisco, Yuma County, and Maricopa County

The FY 2006 daily detention rates among the six jurisdictions ranged from \$110.69 per day in San Diego to \$46.00 per day in Brooks County, a difference of \$64.69. As a result, it is clear that using the same detention reimbursement rates for all SWBPI jurisdictions does not accurately reflect actual costs to detain the defendants.

In addition to the fact that there is a wide range in the daily detention rates among the jurisdictions, we found that in general the average detention rate based on the SWBPI reimbursement categories exceeded the highest detention rate of the six jurisdictions included in our audit. For example, the average daily detention reimbursement rate among the six jurisdictions included in our audit was \$71.57. However, the average daily SWBPI detention reimbursements for the 1 to 15, 16 to 30, and 31 to 90 day reimbursement categories were \$206.98, \$112.79, and \$67.97 respectively. Only in cases where the defendant was detained for more than 52 days did the SWBPI daily detention rate of \$72.12 more closely resemble the actual average daily cost of \$71.57 to detain the defendants. As noted previously,

³⁵ We did not analyze pre-trial detention costs for the New Mexico DPS because it only submits reimbursement requests for prosecution services. As a result, our audit only included SWBPI reimbursements for prosecution services. SWBPI pre-trial detention reimbursement requests are submitted through the State of New Mexico's counties.

the majority of pre-trial detention services provided for SWBPI defendants fell into the 1 to 15 day reimbursement category. Therefore, SWBPI pre-trial detention amounts generally exceeded the actual pre-trial detention costs incurred by the state and local jurisdictions.

In our judgment, the pre-trial detention reimbursement amounts should be adjusted by OJP to more accurately reflect actual costs. This would provide additional funding for prosecution services and provide a more equitable distribution of SWBPI funding. Additionally, we believe pre-trial detention reimbursements should be based on the actual number of days the defendant was detained rather than on the broad range of days included in the reimbursement categories. This is consistent with the requirements of other reimbursement programs administered by OJP, such as its SCAAP for which the reimbursement amounts are based on actual costs and the specific number of days the inmate was incarcerated.

Reimbursements Based On Days Rather Than Time and Effort

Finally, we found that the reimbursements are based on the number of days the case was open rather than the time and effort spent on prosecuting the case and the actual number of days that the defendant was detained. SWBPI reimbursements are currently based on the length of disposition: (1) 1 to 15 days, (2) 16 to 30 days, (3) 31 to 90 days, and (4) over 90 days.

According to the SWBPI guidelines, case disposition refers to the time between a suspect's arrest and the resolution (e.g., dismissal, plea, conviction) of the criminal charges through a county or state judicial or prosecutorial process. However, in our judgment using the number of days the SWBPI case is open does not accurately reflect the actual cost to prosecute the case. We based this conclusion on the fact that each SWBPI case varies in complexity. For example, in a simple case related to the possession of a controlled substance by a single defendant, the prosecutor's time and effort may be very little as compared to a complex case with multiple defendants. However, the trial date for both cases may be set for more than 90 days after the defendant was arrested. Therefore, both cases would be reimbursed at the over 90-day rate even though the actual costs associated with prosecuting the cases were significantly less. Additionally, prosecution services are reimbursed at the same rate for each jurisdiction even though there is no evidence that these amounts accurately reflect the jurisdiction's prosecution costs. In our judgment, the prosecution reimbursement amounts should be adjusted by OJP to more accurately reflect the actual costs involved in prosecuting the case.

While the number of days the defendant is detained is an accurate measure of the pre-trial detention costs for SWBPI cases, in our judgment the current SWBPI reimbursement categories do not accurately reflect the pre-trial detention costs. We based this conclusion on the fact that the reimbursements are calculated on a broad range of days rather than the actual number of days the defendant was detained. In many instances using this broad range of days rather than the actual number of days can result in reimbursements for pre-trial detention services far in excess of actual costs. Based on the SWBPI reimbursement amounts, depending on the number of days the defendant was actually detained, for pre-trial detention only cases that fall into the 1 to 15 day reimbursement category, the daily SWBPI pre-trial detention reimbursements range from \$625 per day to \$83 per day; the daily pre-trial detention reimbursements for the 16 to 30 day category range from \$156.25 per day to \$83 per day; and the daily pre-trial detention reimbursements for the 31 to 90 day reimbursement category range from \$121 per day to \$42. Tables 8 and 9 detail the average SWBPI pre-trial detention reimbursements based on the actual number of days the defendant was detained.

**TABLE 8.
CALCULATION OF EFFECTIVE DAILY DETENTION RATES
(1 TO 15 DAY AND 16 TO 30 DAY CATEGORIES)**

| NUMBER OF DAYS | DAILY RATE | NUMBER OF DAYS | DAILY RATE |
|-----------------------|------------------------|-----------------------|------------------------|
| 1 | N/A ³⁶ | 16 | \$156.25 |
| 2 | \$625.00 | 17 | 147.06 |
| 3 | 416.67 | 18 | 138.89 |
| 4 | 312.50 | 19 | 131.58 |
| 5 | 250.00 | 20 | 125.00 |
| 6 | 208.33 | 21 | 119.05 |
| 7 | 178.57 | 22 | 113.64 |
| 8 | 156.25 | 23 | 108.70 |
| 9 | 138.89 | 24 | 104.17 |
| 10 | 125.00 | 25 | 100.00 |
| 11 | 113.64 | 26 | 96.15 |
| 12 | 104.17 | 27 | 92.59 |
| 13 | 96.15 | 28 | 89.29 |
| 14 | 89.29 | 29 | 86.21 |
| 15 | 83.33 | 30 | 83.33 |
| <i>Average</i> | <i>\$206.98</i> | <i>Average</i> | <i>\$112.79</i> |

Source: OIG analysis of SWBPI reimbursements

³⁶ According to SWBPI guidelines, a case is only eligible for pre-trial detention reimbursement if the defendant is held overnight; as a result, by definition all defendants for eligible cases would be detained for at least 2 days.

TABLE 9.
CALCULATION OF EFFECTIVE DAILY DETENTION RATES
(31 TO 90 DAY CATEGORY)

| NUMBER OF DAYS | DAILY RATE | NUMBER OF DAYS | DAILY RATE | NUMBER OF DAYS | DAILY RATE | NUMBER OF DAYS | DAILY RATE |
|----------------|------------|----------------|------------|----------------|------------|----------------|------------|
| 31 | \$120.97 | 46 | \$81.52 | 61 | \$61.48 | 76 | \$49.34 |
| 32 | 117.19 | 47 | 79.79 | 62 | 60.48 | 77 | 48.70 |
| 33 | 113.64 | 48 | 78.13 | 63 | 59.52 | 78 | 48.08 |
| 34 | 110.29 | 49 | 76.53 | 64 | 58.59 | 79 | 47.47 |
| 35 | 107.14 | 50 | 75.00 | 65 | 57.69 | 80 | 46.88 |
| 36 | 104.17 | 51 | 73.53 | 66 | 56.82 | 81 | 46.30 |
| 37 | 101.35 | 52 | 72.12 | 67 | 55.97 | 82 | 45.73 |
| 38 | 98.68 | 53 | 70.75 | 68 | 55.15 | 83 | 45.18 |
| 39 | 96.15 | 54 | 69.44 | 69 | 54.35 | 84 | 44.64 |
| 40 | 93.75 | 55 | 68.18 | 70 | 53.57 | 85 | 44.12 |
| 41 | 91.46 | 56 | 66.96 | 71 | 52.82 | 86 | 43.60 |
| 42 | 89.29 | 57 | 65.79 | 72 | 52.08 | 87 | 43.10 |
| 43 | 87.21 | 58 | 64.66 | 73 | 51.37 | 88 | 42.61 |
| 44 | 85.23 | 59 | 63.56 | 74 | 50.68 | 89 | 42.13 |
| 45 | 83.33 | 60 | 62.50 | 75 | 50.00 | 90 | 41.67 |
| Average | | | | \$67.97 | | | |

Source: OIG analysis of SWBPI reimbursements

As stated previously, the FY 2006 daily detention rates among the six jurisdictions included in our audit ranged from \$110.69 per day in San Diego to \$46.00 per day in Brooks County. Additionally, the average daily detention rate for the six jurisdictions was \$71.57 per day. Therefore, using the broad range of days rather than the actual number of days for SWBPI pre-trial detention reimbursements generally results in reimbursement far in excess of actual costs. This is due to the majority of pre-trial detention services provided for SWBPI defendants who fall into the 1 to 15 day reimbursement category. This issue is further compounded by the fact that reimbursements for SWBPI cases submitted in the "both" category are based on the number of days it took to prosecute the case. A jurisdiction could receive up to \$5,000 for pre-trial detention services (\$2,500 per day) even

when a defendant was only held overnight and released the next day. Therefore, basing reimbursements on a broad range of days rather than the actual number of days the defendant was detained does not accurately reflect pre-trial detention costs.

Conclusion

We found the following conditions related to OJP's administration and oversight of its SWBPI program:

- Applicants are not required to provide any documentation supporting reimbursement requests.
- OJP does not review the applications for accuracy or to determine the eligibility of cases submitted for reimbursement.
- OJP does not conduct any monitoring activities of SWBPI recipients.
- Based on our review of seven SWBPI recipients, we found unallowable and unsupported reimbursements totaling \$15.57 million, which equates to 28 percent of the total reimbursements audited and funds to be put to better use of \$27,500. The results of our audits are discussed in detail in Finding III. However, the significant dollar-related findings we identified further support our conclusion that OJP does not adequately oversee the SWBPI program.
- Reimbursements are not based on actual costs incurred by the jurisdictions to prosecute federally declined-referred criminal cases.
- The SWBPI guidelines require the recipients to certify that total federal reimbursements do not exceed 100 percent of actual prosecution and pre-trial detention costs for SWBPI cases. However, none of the seven jurisdictions included in our audit maintained any documentation to support the costs associated with SWBPI cases submitted for reimbursement, although the jurisdictions were able to provide us with data related to the pre-trial detention costs. As a result, based on our analysis of the seven jurisdictions included in our audit, we found that SWBPI recipients received reimbursements totaling \$49.78 million in excess of the supported annualized costs.
- Reimbursements for cases submitted under the "both" prosecution and pre-trial detention category are based on the number of days to prosecute the case, regardless of the length of time the defendant was detained. We found that on average for 69 percent of the over 90 day

“both” cases, the pre-trial detention would have been reimbursed at a lesser amount based on the number of days the defendant was detained.

- Prosecution services are reimbursed at the same amounts as pre-trial detention services, even though there is no evidence that prosecution and pre-trial detention costs are similar and should be reimbursed at the same rate. Additionally, there is no evidence that these amounts accurately reflect the actual average prosecution and detention costs for each Southwest Border jurisdiction.
- Based on our analysis of the daily pre-trial detention rates, we determined that daily detention rates among the six jurisdictions ranged from \$110.69 per day in San Diego to \$46.00 per day in Brooks County, a difference of \$64.69 per day. We also found that the average daily detention reimbursement rate among the six jurisdictions included in our audit was \$71.57. However, the average daily SWBPI detention reimbursements for the 1 to 15, 16 to 30, and 31 to 90 day reimbursement categories are \$206.98, \$112.79, and \$67.97, respectively.
- The reimbursements are based on the number of days the case was open rather than the time and effort spent on prosecuting the case, which in our judgment does not accurately reflect the actual cost to prosecute the case.
- Using the number of days the defendant is detained is an accurate measure of the pre-trial detention costs for SWBPI cases. However, because SWBPI reimbursements are based on a broad range of days rather than the actual number of days, generally reimbursements for pre-trial detention services far exceeds actual costs. For example, for pre-trial detention only cases that fall into the 1 to 15 day reimbursement category, the daily pre-trial detention reimbursements range from \$625 per day to \$83 per day; the daily pre-trial detention reimbursements for the 16 to 30 day category range from \$156 per day to \$83 per day; and the daily pre-trial detention reimbursements for the 31 to 90 day category range from \$121 per day to \$42 per day depending on the number of days the defendant was actually detained. The average daily detention rate for the six jurisdictions was only \$71.57 per day. Therefore, using the broad range of days rather than the actual number of days for SWBPI pre-trial detention reimbursements can result in reimbursement far in excess of actual costs.

All of these conditions have resulted in jurisdictions receiving reimbursement for unsupported and ineligible cases, and thus jurisdictions may be receiving reimbursements in excess of their actual costs. The importance of the issues is also reinforced by the fact that, as of the 4th quarter of FY 2006, SWBPI applicants only received 44 percent of the maximum reimbursement amount because reimbursement requests exceeded available SWBPI funding. Our findings demonstrate that OJP is not adequately administering and overseeing its SWBPI program.

Recommendations

We recommend OJP:

1. Require SWBPI recipients to submit a list of cases in support of the reimbursement requests. This list should include sufficient information to verify the eligibility of the cases submitted for reimbursement, including: (1) case number, (2) defendant name, (3) arrest date, (4) disposition date, (5) initiating federal law enforcement agency, and (6) referring federal agency. Additionally, for pre-trial detention reimbursements the case list should include the defendant booking date and release date.
2. Review reimbursement requests and the supporting case list to ensure that the number of cases submitted for reimbursement is accurate and that all cases submitted are eligible for reimbursement.
3. Conduct monitoring activities of SWBPI recipients to: (1) ensure compliance with the programmatic, administrative, and fiscal requirements of relevant statutes, regulations, policies, and guidelines; (2) provide guidance on OJP policies and procedures, program requirements, general federal regulations, and basic programmatic, administrative, and reporting requirements; and (3) identify and resolve problems that may impede the effective administration of the program.
4. Require that SWBPI recipients provide and maintain data on the actual prosecution and detention costs for SWBPI cases.
5. Adjust SWBPI reimbursement amounts to more accurately reflect actual costs based on the cost data provided by SWBPI participants.
6. Eliminate the "both" category and require SWBPI jurisdictions to submit prosecution and pre-trial detention reimbursement requests separately.

7. Ensure that reimbursements for prosecution services are based on the time and effort spent on prosecuting the case rather than the number of days the case was open.
8. Ensure that pre-trial detention reimbursements are based on the actual number of days the defendant was detained.
9. Ensure that pre-trial detention reimbursements are based on the jurisdiction's actual daily detention rate.

II. ADDITIONAL FEDERAL PROGRAMS WITH OVERLAPPING OBJECTIVES

Our audit found that OJP has not taken any action to identify potential duplicate funding between the SWBPI program and other federal prosecution and pre-trial detention reimbursement or grant programs. Additionally, we found that with the exception of El Paso County, Texas, none of the jurisdictions included in our audit, who received additional federal funding for prosecution and pre-trial detention services, took any steps to ensure that SWBPI reimbursements, when combined with additional federal funding, did not exceed the total cost associated with these cases. Further, none of the seven jurisdictions included in our audit maintained any documentation to support the costs associated with SWBPI cases submitted for reimbursement.

At the time SWBPI reimbursement applications are submitted, the jurisdiction's CEO or designee must certify that the ". . . application does not contain payment claims for cases already fully reimbursed by federal funds, or when combined with other federal reimbursement, grant, or payment funds, does not make payment claims in excess of 100 percent of the cost of prosecuting and or detaining case defendants in the reporting period." Additionally, on the SWBPI application, the jurisdiction's CEO or designee is required to certify that they ". . . have made the necessary application adjustments to account for my jurisdiction's receiving reimbursement, subsidy, or the functional equivalent thereof, through other federal grant programs, or other reimbursable agreements with a federal agency, including federal grant programs that indirectly award funds to the county or state government for prosecution or detention services."

These guidelines, coupled with a concern raised by the ONDCP regarding the possibility of SWBPI recipients also receiving reimbursement for prosecution services under the HIDTA program, led us to look closely into the possibility of duplicate funding between the SWBPI program and other federal prosecution and detention reimbursement programs.

Additional Federal Prosecution and Detention Funding

In addition to the SWBPI program, we identified three other major federal programs that provide funding to state and local jurisdictions for prosecution and detention services. These programs are the ONDCP HIDTA Drug Prosecution Initiatives, the OJP's Byrne Grant Program, and the DHS ICE SCAAP. The potential exists for state and local governments to receive

funding from these programs and the SWBPI program and duplicate federal funding assistance on individual cases.

High Intensity Drug Trafficking Area Drug Prosecution Initiatives

ONDCP, a component of the Executive Office of the President, was established by the Anti-Drug Abuse Act of 1988. The principal purpose of ONDCP is to establish policies, priorities, and objectives for the nation's drug control program. The goals of the drug control program are to reduce illicit drug use, manufacturing and trafficking, drug-related crime and violence, and drug-related health consequences. To achieve these goals, the Director of ONDCP is charged with producing the National Drug Control Strategy, which directs anti-drug efforts and establishes a program, a budget, and guidelines for cooperation among federal, state, and local entities.

ONDCP also administers the HIDTA program, which provides assistance to federal, state, and local law enforcement entities operating in areas most adversely affected by drug trafficking.³⁷ A central feature of the HIDTA program is the discretion granted to HIDTA executive boards to design and carry out activities that reflect the specific drug trafficking threats found in each HIDTA region. In FY 2006, HIDTA funding totaled \$224.7 million, of which \$7 million was budgeted for locally designed strategies for prosecution. The HIDTA Prosecution Initiatives are an optional initiative for local HDTAs and their executive boards, which determine if an initiative is needed in their area. The HIDTA Prosecution Initiatives funding covers salaries and some fringe benefits for prosecutors to work on drug related HIDTA cases. The possibility for duplicate funding occurs when a state or local organization submits a SWBPI reimbursement application for a HIDTA drug case that was prosecuted by a HIDTA-funded prosecutor.

Edward Byrne Memorial Justice Assistance Grant Program

The Byrne Grant Program is a partnership among federal, state, and local governments to create safer communities. Byrne grants afford agencies the flexibility to prioritize and place its federal grant funds where they are needed most. In FY 2006, Byrne grant funding totaled \$292 million.

Byrne grant funds can be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice for any one or more of the

³⁷ HIDTA was reauthorized in the Office of National Drug Control Policy Reimbursement Act of 2006 (21 U.S.C § 1701 [2006]).

following purpose areas: (1) law enforcement programs, (2) prosecution and court programs, (3) prevention and education programs, (4) corrections and community corrections programs, (5) drug treatment programs, and (6) planning, evaluation, and technology improvement programs. The possibility for duplicate funding occurs when jurisdictions receive both SWBPI prosecution reimbursements and Byrne grant prosecution funds for the same case.

State Criminal Alien Assistance Program

BJA administers SCAAP in conjunction with the DHS ICE. SCAAP provides federal payments to states and localities that incur correctional officer salary costs for incarcerating undocumented criminal aliens who have at least one felony or two misdemeanor convictions for violations of state or local laws, and who are incarcerated for at least four consecutive days during the reporting period. Due to the complex nature of immigration status, DHS ICE makes the final decision on the status of submitted inmate records to determine if the inmate is an undocumented criminal alien.

To apply for SCAAP funding, the jurisdictions must submit inmate data files – including identifiable information – on the inmate that are used to determine SCAAP eligibility. The per diem cost is derived by dividing the jurisdiction's total inmate days into the total correctional officer salary costs.

As stated in Finding I, we found that the seven entities tested during our audit did not supply OJP with documentation supporting their SWBPI reimbursement requests and did not maintain records tracking the actual costs associated with SWBPI cases. Further, the CEOs for each SWBPI recipient certified that total federal funds for SWBPI cases did not exceed 100 percent of the jurisdiction's annualized costs. However, none of the seven jurisdictions included in our audit maintained any documentation to support costs associated with SWBPI cases submitted for reimbursement. Thus none of the SWBPI recipients ensured that reimbursements did not exceed costs. As a result, the jurisdictions included in our audit made unsupported certifications in each quarterly SWBPI reimbursement application that total federal funds did not exceed 100 percent of the jurisdiction's annualized costs as detailed in the following sections.

Analysis of Additional Federal Prosecution Funding

We determined that six of the seven jurisdictions included in our audit received HIDTA, Byrne, and other federal prosecution funds totaling \$27 million, as shown in Table 10.³⁸

**TABLE 10.
PROSECUTION GRANTS RECEIVED BY SWBPI RECIPIENTS**

| | HIDTA | BYRNE | OTHER | TOTAL |
|-----------------|---------------------|--------------------|--------------------|---------------------|
| El Paso County | \$ 2,281,578 | - | \$ 2,067,520 | \$4,349,098 |
| New Mexico DPS | 2,639,254 | - | \$6,074,948 | 8,714,202 |
| Maricopa County | 1,638,836 | 4,699,239 | - | 6,338,075 |
| Yuma County | 1,637,388 | 1,775,948 | - | 3,413,336 |
| San Diego | 2,394,462 | - | 126,856 | 2,521,318 |
| San Francisco | - | 1,862,802 | - | 1,862,802 |
| Brooks County | - | - | - | - |
| TOTAL | \$10,591,518 | \$8,337,989 | \$8,269,324 | \$27,198,831 |

Source: OJP, ONDCP, and SWBPI recipients

Between FYs 2002 and 2006, El Paso County received federal prosecution funding totaling \$4.35 million. Despite the fact that El Paso County certified on its SWBPI applications that SWBPI reimbursements when combined with other federal funding did not exceed 100 percent of their costs, El Paso County could not provide any data on actual costs to prosecute the SWBPI cases. However, El Paso County did deduct \$1.51 million from its eligible SWBPI reimbursements to account for a portion of the additional federal prosecution funding received by the County. Although El Paso County did not track its costs to prosecute SWBPI cases, according to El Paso County officials the \$1.51 million was deducted from their SWBPI reimbursement requests in an attempt to ensure that federal funding did not exceed 100 percent of the costs to prosecute SWBPI case.

³⁸ The other grants include the Criminal Enterprise Unit Grant; Drug Prosecution Grant; Rural Domestic Violence Grant; and the Community Gun Violence Program

Between FY 2002 and 2006, Brooks County did not receive any additional federal prosecution funding. However, between FY 2002 and 2006, New Mexico DPS, Maricopa County, Yuma County, San Diego, and San Francisco received federal prosecution funds totaling \$8.71 million, \$6.34 million, \$3.41 million, \$2.52 million, and \$1.86 million respectively. Despite the fact that each of these jurisdictions certified in its SWBPI applications that SWBPI reimbursements when combined with other federal funding did not exceed 100 percent of their costs, none of the jurisdictions could provide any data on actual costs to prosecute SWBPI cases. Additionally, we found that none of these jurisdictions took any steps to ensure that SWBPI reimbursements received for these cases did not duplicate funding received under other federal prosecution grants. Therefore, the possibility exists that these jurisdictions received duplicate funding.

As stated previously, on the SWBPI application the jurisdictions' CEOs or designees are required to certify that they have made the necessary adjustments to its reimbursement request to account for any other federal funding for prosecution or detention services. However, despite the fact that six of the seven jurisdictions included in our audit received additional federal funds for prosecution services, we found that with the exception of El Paso County none of the jurisdictions have taken any action to ensure they were not receiving duplicate federal prosecution funds. In our judgment, the seven jurisdictions included in our audit made unsupported certifications in each quarterly SWBPI reimbursement application that the total federal funds provided to the jurisdiction for SWBPI cases during the reporting period did not exceed 100 percent of the jurisdiction's annualized costs for prosecution services.

As stated previously, OJP should obtain sufficient cost data from each SWBPI recipient to ensure that reimbursements are linked to actual costs associated with SWBPI cases. Each recipient should track and maintain sufficient data on the costs associated with SWBPI cases to support its certification that total federal funds received do not exceed 100 percent of the annualized costs for its SWBPI cases. This is consistent with the requirements of other reimbursement programs administered by OJP, such as SCAAP, which requires that recipients provide actual cost information to determine the per day reimbursement rate.

Analysis of Additional Federal Detention Funding

Since the SWBPI program also includes reimbursements for pre-trial detention services, we looked at the possibility of duplicate funding with SCAAP. Five of the seven jurisdictions included in our audit received SCAAP

funds totaling \$95,559 for pre-trial detention services provided in SWBPI cases submitted for reimbursement.³⁹ Specifically,

- San Diego received pre-trial detention SCAAP funding totaling \$49,232 for 433 cases that were also submitted for pre-trial detention reimbursement under the SWBPI program. In addition, there are 82 SWBPI cases for which SCAAP reimbursement has been requested but not yet received.
- El Paso County received pre-trial detention SCAAP funding totaling \$19,499 for 37 cases that were also submitted for pre-trial detention reimbursement under the SWBPI program. In addition, there are 45 SWBPI cases for which SCAAP reimbursement has been requested but not yet received.
- Yuma County received pre-trial detention SCAAP funding totaling \$21,415 for 18 cases that were also submitted for pre-trial detention reimbursement under the SWBPI program. In addition, there are three cases for which SCAAP reimbursement has been requested but not yet received.
- Maricopa County received pre-trial detention SCAAP funding totaling \$5,413 for 14 cases that were also submitted for pre-trial detention reimbursement under the SWBPI program. In addition, there are 10 cases for which SCAAP reimbursement has been requested but not yet received.
- San Francisco received SCAAP funds totaling \$7,191,393. However, San Francisco was unable to provide a list of cases submitted for reimbursement because their SWBPI submissions were not based on specific cases. As a result, we were unable to determine if San Francisco received pre-trial detention SCAAP funding for any of its SWBPI pre-trial detention cases.

Despite the fact that four of the seven jurisdictions included in our audit received additional federal funds for pre-trial detention services, we found that none of the jurisdictions have taken any action to ensure they were not receiving duplicate SCAAP funds. In our judgment, the seven

³⁹ New Mexico DPS was not included in our analysis because New Mexico DPS only submits reimbursement requests for prosecution services. As a result, our audit only included SWBPI reimbursements for prosecution services. SWBPI pre-trial detention reimbursement requests for the State of New Mexico are submitted separately by the counties. Also, Brooks County was not included in our analysis because it did not receive SCAAP funding between FY 2002 through FY 2006.

jurisdictions included in our audit made unsupported certifications in each quarterly SWBPI reimbursement application that the total federal funds provided to the jurisdiction for SWBPI cases during the reporting period did not exceed 100 percent of the jurisdiction's annualized costs for prosecution and pre-trial detention services.

We met with OJP officials to discuss the possibility of duplicate funding between the SWBPI program and other federal programs that provide funding for prosecution and pre-trial detention services. Based on our discussion, we found that OJP has not taken any action to identify potential duplicate funding between the three programs. Specifically, the OJP official responsible for both the SWBPI program and SCAAP stated that there is not enough information collected from SWBPI reimbursements to identify duplicate funding.

Recommendations

We recommend OJP:

10. Ensure that SWBPI recipients maintain sufficient documentation to support that SWBPI reimbursements, when combined with other federal prosecution and pre-trial detention funding, do not exceed 100 percent of the costs to prosecute SWBPI cases.
11. Ensure that SWBPI recipients make the necessary adjustments to SWBPI applications to account for other federal prosecution and pre-trial detention funding.
12. Review SWBPI reimbursement applications to identify any potential duplicate funding.

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III. ALLOWABILITY OF REIMBURSEMENTS

We completed seven external audits of individual SWBPI recipients to determine if SWBPI reimbursements were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program. Our audits covered SWBPI reimbursements totaling \$55.11 million and identified unallowable and unsupported SWBPI reimbursements of \$15.57 million, which equates to 28 percent of the total reimbursements.⁴⁰ In addition, we identified funds to be put to better use totaling \$27,500 related to unsupported and ineligible cases submitted for reimbursement that had not yet been paid.⁴¹

Prior to the initiation of this audit, the OIG conducted audits of three SWBPI recipients: (1) New Mexico DPS; (2) Yuma County; and (3) Maricopa County.⁴² As part of the verification phase of the audit, the OIG conducted four additional audits of: (4) El Paso County; (5) San Diego; (6) Brooks County; and (7) San Francisco. The purpose of these audits was to determine if SWBPI reimbursements were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program. In conducting the audits, we determined whether the:

- quarterly reimbursement requests were supported and accurate;
- cases were submitted for reimbursement in the correct quarters, (the quarter in which the case was resolved);
- cases were federally initiated;
- cases were federally declined and referred to the state or local jurisdiction for prosecution;

⁴⁰ Our audit of New Mexico DPS only included SWBPI funding totaling \$3,780,438 received by the 2nd, 3rd, and 11th, Judicial Districts for the period October 2003 to March 2005.

⁴¹ The dollar-related findings identified in our reviews of the seven SWBPI recipients were addressed in separate external audit reports. Thus, we are not offering any recommendations in this report specific to the \$15.57 million in unallowable and unsupported reimbursements and \$27,500 in funds to be put to better use.

⁴² The 11th Judicial District is comprised of two divisions. However, our audit only included Division I, which received 18 percent of the total SWBPI funds received by the State of New Mexico.

- cases were prosecuted by the state or county prosecutor;
- defendant was detained at a minimum overnight for the pre-trial detention cases; and
- reimbursement amounts were calculated correctly.

Based on the external audits of seven individual SWBPI recipients, we identified unallowable and unsupported SWBPI reimbursements of \$15.57 million, which equates to 28 percent of the total reimbursements. In addition, we identified funds to be put to better use totaling \$27,500 related to unsupported and ineligible cases submitted for reimbursement that had not yet been paid. In our judgment, the significant amount of dollar-related findings identified during our audits of SWBPI recipients is due in part to the fact that OJP is not adequately overseeing or monitoring the SWBPI program. As discussed in Finding I, we found that OJP does not require SWBPI applicants to provide documentation supporting the number of cases submitted for reimbursement through the electronic application. Additionally, OJP does not review the application's accuracy or determine the eligibility of the cases submitted for reimbursement and has not conducted any monitoring activities of SWBPI recipients. The results of our SWBPI audits are discussed in detail in the following sections.

Accuracy of Reimbursements

SWBPI recipients request reimbursements of SWBPI funds through an on-line application available on the BJA SWBPI website. Pursuant to the SWBPI guidelines, eligible cases are reimbursed using a uniform payment per case schedule based on the length of disposition, which is calculated from the date of the suspect's arrest through resolution. Resolution of the case is defined as dismissal, conviction, or plea.

We reviewed the reimbursement requests from all seven external audits to determine if the number of cases claimed for each disposition category was supported by the detailed case list obtained during fieldwork. Based on our review, we determined that the reimbursement requests were not always supported by the master case list, resulting in excess reimbursements totaling \$5.92 million.⁴³

⁴³ Of the \$5.92 million in excess reimbursements, \$5.4 million was specific to San Francisco. Although San Francisco provided two separate lists in support of the SWBPI cases submitted for reimbursement, according to San Francisco officials neither list was representative of the SWBPI cases submitted for reimbursement because the SWBPI submissions were not based on actual cases. As a result, we found that all of the SWBPI reimbursements submitted by San Francisco were not supported.

We also reviewed the detailed case list to determine if the cases were submitted in the correct quarter - the quarter in which the case was resolved. Based on our review, we identified 339 cases that were submitted for reimbursement in the wrong quarter, resulting in questioned costs of \$793,933.

In our judgment, these questioned costs could have been avoided if OJP required recipients to submit documentation in support of the reimbursement requests. As stated in Finding I, at a minimum recipients should be required to submit a detailed list of cases for which they are requesting reimbursement. This is consistent with the requirements of other reimbursement programs administered by OJP, such as SCAAP, which requires a list of inmates, identifying information, and the length of detention.

Case Eligibility

Pursuant to the SWBPI guidelines, an eligible case is any federally initiated criminal case that the U.S. Attorney declined to prosecute and referred to the state or county for prosecution. The SWBPI guidelines define federally initiated as a case resulting from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law. This may include investigations resulting from multi-jurisdictional task forces, (such as HIDTA and the Organized Crime Drug Enforcement Task Forces (OCDETF)). The SWBPI guidelines further state that, "referred cases are eligible regardless of whether the case was formally declined and referred by a U.S. Attorney, or through a blanket federal declination-referral policy, an accepted federal law enforcement practice, or by federal prosecutorial discretion." Federally referred cases that are declined and not prosecuted by the state or county are not eligible for reimbursement.

At each site, we selected and analyzed a sample of cases submitted by the recipient to determine whether the cases were eligible for reimbursement under the requirements of the SWBPI guidelines. We identified 1,637 cases that were not eligible for reimbursement, resulting in questioned costs totaling \$8.28 million and funds to be put to better use totaling \$27,500. Specifically, we found:

- 985 cases that were not federally initiated, resulting in questioned costs of \$5,164,302 and funds to be put to better use of \$17,500;

- 208 cases for which the recipient had not retained supporting case documentation resulting in questioned costs totaling \$826,003 and funds to be put to better use of \$10,000;
- 142 cases for which the same defendant was submitted for reimbursement more than once resulting in questioned costs totaling \$888,517; and
- 302 cases submitted for pre-trial detention reimbursement for which the defendant was not detained overnight resulting in questioned costs totaling \$1,399,134.

A summary of the findings identified for each site are illustrated in Table 11.

**TABLE 11.
SUMMARY OF FINDINGS FROM PRIOR OIG SWBPI AUDITS**

| SITE | | NOT FEDERALLY INITIATED | RECORD RETENTION PROBLEMS | DUPLICATE DEFENDANT SUBMITTED | DEFENDANT NOT DETAINED OVERNIGHT | TOTALS |
|----------------------|--------------------------------------|-------------------------------|---------------------------------|-------------------------------------|---|------------------|
| NEW MEXICO DPS | NUMBER OF CASES | 203 | - | 4 | - | 207 |
| | QUESTIONED COSTS ⁴⁴ | \$706,164 | - | \$10,922 | - | \$717,086 |
| | FUNDS TO BETTER USE ⁴⁵ | - | - | - | - | - |
| YUMA COUNTY | NUMBER OF CASES | 9 | - | - | 16 | 25 |
| | QUESTIONED COSTS | \$16,272 | - | - | \$62,919 | \$79,191 |
| | FUNDS TO BETTER USE | \$17,500 | - | - | - | \$17,500 |

⁴⁴ **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

⁴⁵ **Funds Put to Better Use** are funds not yet expended that could be used more efficiently if management took actions to implement and complete audit recommendations.

| SITE | | NOT FEDERALLY INITIATED | RECORD RETENTION PROBLEMS | DUPLICATE DEFENDANT SUBMITTED | DEFENDANT NOT DETAINED OVERNIGHT | TOTALS |
|---------------------------------|---------------------------------------|--|--|--|---|--------------------|
| MARICOPA COUNTY | NUMBER OF CASES | 3 | 39 | - | - | 42 |
| | QUESTIONED COSTS | \$16,409 | \$176,948 | - | - | \$193,357 |
| | FUNDS TO BETTER USE | - | \$10,000 | - | - | \$10,000 |
| EL PASO COUNTY ⁴⁶ | NUMBER OF CASES | 627 | - | 131 | 269 | 1,027 |
| | QUESTIONED COSTS | \$3,768,750 | - | \$848,250 | \$1,272,500 | \$5,889,500 |
| | FUNDS TO BETTER USE | - | - | - | - | - |
| SAN DIEGO | NUMBER OF CASES | 12 | 9 | 1 | 15 | 37 |
| | QUESTIONED COSTS | \$69,116 | \$27,010 | \$5,000 | \$56,250 | \$157,376 |
| | FUNDS TO BETTER USE | - | - | - | - | - |
| BROOKS COUNTY | NUMBER OF CASES | 131 | 160 | 6 | 2 | 299 |
| | QUESTIONED COSTS | \$587,591 | \$622,045 | \$24,345 | \$7,465 | \$1,241,446 |
| | FUNDS TO BETTER USE | - | - | - | - | - |
| SAN FRANCISCO | NUMBER OF CASES | - | - | - | - | - |
| | QUESTIONED COSTS | - | - | - | - | - |
| | FUNDS TO BETTER USE | - | - | - | - | - |
| TOTALS | TOTAL NUMBER OF CASES | 985 | 208 | 142 | 302 | 1637 |
| | TOTAL QUESTIONED COSTS | \$5,164,302 | \$826,003 | \$888,517 | \$1,399,134 | \$8,277,956 |
| | TOTAL FUNDS TO BETTER USE | \$ 17,500 | \$ 10,000 | - | - | \$ 27,500 |

Source: Prior OIG SWBPI audits

⁴⁶ The questioned costs for El Paso County are based on the unallowable amounts requested, not received.

Feedback From SWBPI Recipients

At each of the seven sites included in our audit, we asked officials for feedback on OJP's administration of the SWBPI program. Officials at all seven sites stated that OJP has not provided any training on the SWBPI guidelines. Additionally, four of the recipients stated that they had trouble understanding the guidelines and one recipient stated that it thought it understood the guidelines until we conducted our audit.

We also asked officials in each of the seven SWBPI sites if there was anything unclear about the SWBPI program that hindered its success. The officials provided the following responses:

- The guidelines are open for interpretation.
- There is a lack of training.
- Case lists should be submitted with applications.
- No alerts are given as to when billing periods are open.
- No advance notice is given on when payments will be made.
- No advance notice is given as to how much the payment will be.

Based on the results of our external audits and the comments we received in the seven jurisdictions, in our judgment OJP also needs to provide training to the participating jurisdictions to help clarify the SWBPI guidelines.

Recommendation

We recommend OJP:

13. Provide training to the participating jurisdictions on the SWBPI guidelines.

STATEMENT ON INTERNAL CONTROLS

In planning and performing our audit of OJP's administration of the SWBPI program, we considered OJP's internal controls for the purpose of determining our auditing procedures. The evaluation of OJP was not made for the purpose of providing assurance on the internal control structure as a whole. However, we noted certain matters that we consider reportable conditions under the generally accepted *Government Auditing Standards*.⁴⁷

Finding I

- OJP does not adequately oversee the SWBPI program.
- Applicants are not required to provide any documentation supporting reimbursement requests.
- OJP does not review the applications for accuracy or conduct any monitoring activities to determine the eligibility of cases submitted for reimbursement.
- Reimbursements are not based on actual costs incurred by the jurisdictions to prosecute federally declined-referred criminal cases.
- None of the seven jurisdictions included in our audit maintained any documentation to support costs associated with SWBPI cases submitted for reimbursement.

Finding II

- OJP has not taken any action to identify potential duplicate funding between the SWBPI program and other federal prosecution and pre-trial detention reimbursement or grant programs.

Because we are not expressing an opinion on OJP's internal control structure as a whole, this statement is intended solely for the information and use of OJP in administering the SWBPI program.

⁴⁷ Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect OJP's ability to administer the SWBPI program.

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STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards*, we tested OJP's records and documents pertaining to the SWBPI program to obtain reasonable assurance OJP complied with laws and regulations that, if not complied with, in our judgment could have a material effect on the administration of the SWBPI program. Compliance with laws and regulations applicable to the SWBPI program is the responsibility of OJP management. An audit includes examining, on a test basis, evidence about compliance with laws and regulations. At the time of this audit, the pertinent legislation could be found in: Pub. L. No. 107-77 (2001), the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, and all subsequent SWBPI appropriations.

Except for the issues discussed in the Findings and Recommendations section of this report, nothing came to our attention that caused us to believe that OJP management was not in compliance with the federal regulations governing the SWBPI program listed above.

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OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the audit were to: (1) evaluate OJP's administration and management of SWBPI reimbursements; (2) identify additional federal programs with overlapping objectives; and (3) determine if SWBPI reimbursement requests submitted by eligible jurisdictions are allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program.

We conducted our audit in accordance with *Government Auditing Standards*. We included such tests as were necessary to accomplish the audit objectives. The audit generally covered, but is not limited to, SWBPI reimbursements received during the period FYs 2002 through 2006. Audit work was conducted at OJP, ONDCP, ATF, DEA, FBI, EOUSA and the following selected SWBPI recipients: (1) New Mexico DPS; (2) Yuma County, Arizona; (3) Maricopa County, Arizona; (4) El Paso County, Texas; (5) San Diego, California; (6) Brooks County, Texas; and (7) San Francisco, California.⁴⁸

To evaluate the effectiveness of OJP's administration and oversight over SWBPI reimbursements, we assessed the processes used by OJP for reviewing and approving applications, reimbursing funds, and monitoring recipients. Specifically, we:

- identified the SWBPI guidelines and determined whether the criteria was complete and well-defined,
- evaluated OJP's process for verifying the eligibility and accuracy of cases submitted for reimbursement,
- evaluated OJP's process for monitoring SWBPI recipients,
- assessed the quality of guidance provided by OJP to ensure critical program requirements are understood and met by recipients,
- coordinated with the U.S. Attorneys and federal law enforcement agencies and examined their declination-referral policies along with their working relationship with the state and local law enforcement,

⁴⁸ Our audit of New Mexico only included SWBPI funding received for the period October 2003 to March 2005 and it included the 2nd, 3rd and 11th judicial districts of the New Mexico DPS.

- assessed the accuracy of the reimbursement amounts and categories,
- reviewed recipient data to determine the combined federal reimbursement amounts received did not exceed 100 percent of the jurisdictions annualized costs for prosecution and pre-trial detention services, and
- reviewed recipient data to determine the dollar amounts jurisdictions would have received if the prosecution and pre-trial detention services were calculated separately.

To identify any potential duplicate funding sources, we:

- coordinated with ONDCP to determine if its HIDTA prosecution funds are duplicated with SWBPI funds,
- coordinated with OJP to determine if SCAAP detention funds are duplicated with SWBPI funds,
- reviewed recipient data to determine if HIDTA funds and other federal prosecution funds are being requested for the same prosecutions, and
- reviewed recipient data to determine if SCAAP funds and SWBPI funds are being requested for the same detention services.

To determine if SWBPI reimbursements are allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI program, we:

- selected a sample of SWBPI recipients and conducted audits of OJP's administration of the selected recipients, and
- assessed the allowability of cases reimbursed in accordance with applicable laws, regulations, guidelines, and terms and conditions of the program.

We included the work performed in prior OIG SWBPI audits in our assessment of the allowability of cases reimbursed.

SWBPI REIMBURSEMENT IN EXCESS OF SUPPORTED COSTS

(DOLLARS IN MILLIONS)⁴⁹

| SITE | FISCAL YEAR | SWBPI REIMBURSEMENT RECEIVED | SUPPORTED COSTS BY RECIPIENT | DIFFERENCE |
|-----------------------|--------------------|-------------------------------------|-------------------------------------|-------------------|
| NEW MEXICO DPS | 2002 | \$ 3.62 | \$0.00 | \$ 3.62 |
| | 2003 | 4.87 | 0.00 | 4.87 |
| | 2004 | 4.03 | 0.00 | 4.03 |
| | 2005 | 4.41 | 0.00 | 4.41 |
| | 2006 | 2.47 | 0.00 | 2.47 |
| | Total | | \$19.41 | \$0.00 |
| BROOKS COUNTY | 2002 | \$ 1.69 | \$0.00 | \$1.69 |
| | 2003 | 1.87 | >0.01 | 1.87 |
| | 2004 | 0.64 | 0.02 | 0.61 |
| | 2005 | 2.45 | 0.04 | 2.41 |
| | 2006 | 0.95 | 0.03 | 0.92 |
| | Total | | \$7.59 | \$0.09 |
| SAN DIEGO | 2002 | \$ 5.90 | \$ 2.48 | \$3.41 |
| | 2003 | 3.51 | 1.32 | 2.19 |
| | 2004 | 3.34 | 1.32 | 2.02 |
| | 2005 | 2.57 | 2.19 | 0.38 |
| | 2006 | 2.54 | 2.74 | (0.20) |
| | Total | | \$17.85 | \$10.04 |

⁴⁹ Differences in the total amounts are due to rounding.

| SITE | FISCAL YEAR | SWBPI REIMBURSEMENT RECEIVED | SUPPORTED COSTS BY RECIPIENT | DIFFERENCE |
|------------------------------|--------------|------------------------------|------------------------------|----------------|
| EL PASO COUNTY | 2002 | \$3.07 | \$1.23 | \$1.84 |
| | 2003 | 2.80 | 0.73 | 2.07 |
| | 2004 | 0.84 | 0.16 | 0.68 |
| | 2005 | 1.70 | 0.82 | 0.87 |
| | 2006 | 1.50 | 0.66 | 0.83 |
| | Total | \$9.90 | \$3.61 | \$6.29 |
| SAN FRANCISCO, CITY & COUNTY | 2002 | \$0.00 | \$0.00 | \$0.00 |
| | 2003 | 0.00 | 0.00 | 0.00 |
| | 2004 | 0.04 | 0.00 | 0.04 |
| | 2005 | 1.71 | 0.00 | 1.71 |
| | 2006 | 3.67 | 0.00 | 3.67 |
| | Total | \$5.41 | \$0.00 | \$5.41 |
| YUMA COUNTY | 2002 | \$0.76 | 0.26 | \$0.48 |
| | 2003 | 0.86 | 0.21 | 0.65 |
| | 2004 | 0.67 | 0.15 | 0.52 |
| | 2005 | 0.43 | 0.17 | 0.26 |
| | 2006 | 0.41 | 0.00 | 0.41 |
| | Total | \$3.13 | \$0.78 | \$2.34 |
| MARICOPA COUNTY | 2002 | 0.57 | 0.15 | \$0.42 |
| | 2003 | 0.57 | 0.18 | 0.40 |
| | 2004 | 0.51 | 0.14 | 0.37 |
| | 2005 | 0.49 | 0.55 | (0.05) |
| | 2006 | 0.47 | 0.58 | (0.11) |
| | Total | \$2.61 | \$1.59 | \$1.02 |
| RECIPIENT TOTAL | | \$65.90 | \$16.12 | \$49.78 |

Scope: New Mexico DPS, Brooks County, San Diego, El Paso County, San Francisco, Yuma County, Maricopa County, and OIG analysis

SWBPI REIMBURSEMENTS BY RECIPIENT
(Dollars in Millions)⁵⁰

| RECIPIENT | FY02 | FY03 | FY04 | FY05 | FY06 | TOTALS |
|---------------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| Arizona | | | | | | |
| State of Arizona | \$0.43 | \$0.35 | \$ 0.49 | \$0.30 | \$ 0.20 | \$ 1.76 |
| Cochise Co. | >0.01 | 0.72 | 0.16 | 0.11 | 0.01 | 1.00 |
| Coconino Co. | --- | 0.01 | --- | --- | 0.44 | 0.45 |
| Maricopa Co. | 0.57 | 0.57 | 0.51 | 0.49 | 0.60 | 2.74 |
| Navajo Co. | 0.66 | 0.52 | 0.25 | 0.21 | 0.04 | 1.69 |
| Pima Co. | --- | 0.20 | 0.05 | 0.02 | 0.17 | 0.43 |
| Santa Cruz Co. | 0.16 | 0.19 | 0.03 | 0.12 | 0.13 | 0.62 |
| Yavapai Co. | 0.37 | --- | --- | --- | --- | 0.37 |
| Yuma Co. | 0.81 | 0.85 | 0.66 | 0.45 | 1.11 | 3.88 |
| Total | \$3.00 | \$3.41 | \$ 2.14 | \$1.70 | \$ 2.70 | \$ 12.95 |
| California | | | | | | |
| Alameda Co. | 0.13 | 0.01 | --- | 0.03 | >0.01 | \$ 0.18 |
| Colusa Co. | --- | --- | --- | >0.01 | --- | >0.01 |
| Contra Costa Co. | 0.08 | 0.05 | --- | 0.11 | 0.06 | 0.29 |
| Fresno Co. | 0.62 | 0.36 | 0.62 | 0.25 | 0.35 | 2.20 |
| Humboldt Co. | --- | --- | --- | 0.21 | 0.30 | 0.51 |
| Imperial Co. | 0.45 | 0.70 | 0.32 | 0.23 | 0.25 | 1.95 |
| Kern Co. | 0.31 | 0.51 | 0.15 | 0.13 | 0.15 | 1.24 |
| Kings Co. | 0.49 | 0.61 | 1.75 | 1.07 | 0.73 | 4.64 |
| Lake Co. | --- | --- | --- | --- | 0.17 | 0.17 |
| Los Angeles Co. | 3.45 | 2.78 | 0.93 | 2.02 | 1.91 | 11.09 |
| Marin Co. | 0.07 | 0.09 | 0.08 | 0.09 | 0.04 | 0.37 |
| Mendocino Co. | 0.22 | 0.24 | 0.18 | 0.05 | 0.45 | 1.15 |
| Merced Co. | 0.10 | 0.14 | 0.05 | 0.08 | 0.01 | 0.37 |
| Monterey Co. | 0.02 | 0.03 | 0.02 | 0.07 | 0.01 | 0.15 |
| Orange Co. | 0.73 | 0.44 | 0.79 | 0.87 | 0.69 | 3.53 |
| Riverside Co. | 2.71 | 3.54 | 1.82 | 1.34 | 1.00 | 10.41 |
| Sacramento Co. | 0.13 | 0.16 | --- | 0.23 | 0.20 | 0.72 |
| San Benito Co. | --- | --- | --- | 0.04 | 0.17 | 0.21 |
| San Bernardino Co. | 1.29 | 0.85 | 1.27 | 0.72 | 2.47 | 6.60 |
| San Diego Co. | 5.90 | 3.51 | 3.47 | 2.59 | 2.54 | 18.00 |
| San Francisco Co. | --- | --- | 0.04 | 1.71 | 3.67 | 5.41 |
| San Luis Obispo Co. | 0.06 | 0.10 | --- | 0.05 | --- | 0.20 |
| San Mateo Co. | --- | --- | 0.24 | 0.26 | 0.35 | 0.86 |
| Santa Barbara Co. | --- | --- | 0.13 | 0.07 | --- | 0.20 |
| Santa Clara Co. | 0.70 | 0.81 | 0.25 | 0.19 | 0.13 | 2.09 |
| Santa Cruz Co. | --- | --- | --- | 0.18 | 0.12 | 0.30 |
| Siskiyou Co. | --- | --- | --- | 0.19 | 0.36 | 0.54 |
| Sonoma Co. | 0.11 | 0.02 | --- | --- | --- | 0.12 |
| Stanislaus Co. | 0.03 | 0.22 | 0.16 | 0.03 | 0.03 | 0.47 |
| Tulare Co. | 0.04 | 0.21 | 0.08 | 0.02 | 0.03 | 0.38 |
| Ventura Co. | 0.84 | 0.27 | 0.42 | 0.16 | 0.16 | 1.83 |
| Total | \$18.45 | \$15.63 | \$12.78 | \$13.00 | \$16.32 | \$ 76.19 |

⁵⁰ Differences in the total amounts are due to rounding.

| RECIPIENT | FY02 | FY03 | FY04 | FY05 | FY06 | TOTALS |
|---------------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| New Mexico | | | | | | |
| Bernalillo Co. | --- | 0.14 | 0.38 | 0.09 | 0.10 | 0.70 |
| Chaves Co. | 0.17 | 0.23 | --- | --- | 0.01 | 0.41 |
| Curry Co. | 0.02 | 0.04 | --- | 0.11 | >0.01 | 0.17 |
| Dona Ana Co. | --- | 1.13 | 1.45 | 0.69 | 0.61 | 3.88 |
| Eddy Co. | 0.06 | 0.11 | --- | 0.13 | --- | 0.30 |
| Grant Co. | 0.03 | 0.02 | --- | --- | --- | 0.04 |
| Hidalgo Co. | 0.02 | 0.06 | 0.04 | 0.02 | 0.05 | 0.19 |
| Lea Co. | 0.05 | 0.32 | 0.01 | --- | --- | 0.38 |
| Luna Co. | 0.31 | 0.21 | 0.17 | 0.13 | 0.06 | 0.88 |
| State of New Mexico | 3.62 | 4.87 | 4.03 | 4.41 | 2.47 | 19.41 |
| Otero Co. | 0.70 | 0.65 | --- | 0.14 | 0.26 | 1.75 |
| Roosevelt Co. | >0.01 | 0.01 | --- | >0.01 | --- | 0.01 |
| San Juan Co. | 0.75 | 0.62 | 0.45 | 0.53 | --- | 2.35 |
| Sierra Co. | 0.02 | >0.01 | --- | --- | --- | 0.02 |
| Taos Co. | 0.02 | 0.05 | --- | --- | --- | 0.07 |
| Quay Co. | --- | --- | --- | --- | 0.02 | 0.02 |
| Total | \$5.75 | \$8.45 | \$ 6.54 | \$ 6.26 | \$ 3.59 | \$ 30.58 |
| Texas | | | | | | |
| Bexar Co. | 0.15 | 0.20 | 0.17 | 0.13 | 0.12 | \$ 0.76 |
| Brewster Co. | 0.02 | --- | 0.01 | 0.01 | 0.01 | 0.04 |
| Brooks Co. | 1.69 | 1.94 | 0.73 | 2.53 | 0.94 | 7.82 |
| Cameron Co. | --- | 0.38 | 0.35 | 0.16 | 0.17 | 1.06 |
| Culberson Co. | --- | --- | --- | --- | >0.01 | >0.01 |
| Dallas Co. | 0.30 | 0.77 | 0.73 | 0.29 | 0.17 | 2.25 |
| Duval Co. | --- | --- | --- | 0.02 | 0.01 | 0.03 |
| El Paso Co. | 5.04 | 4.06 | 1.19 | 1.77 | 1.41 | 13.47 |
| Fayette Co. | --- | 0.01 | --- | >0.01 | >0.01 | 0.02 |
| Grayson Co. | 0.01 | --- | --- | --- | --- | 0.01 |
| Harris Co. | 0.33 | 0.46 | --- | 0.06 | 0.45 | 1.30 |
| Henderson Co. | 0.08 | --- | --- | --- | --- | 0.08 |
| Hill Co. | --- | --- | --- | --- | >0.01 | >0.01 |
| Hudspeth Co. | 1.53 | 1.17 | 1.24 | 0.80 | 0.48 | 5.21 |
| Jim Hogg Co. | --- | --- | 0.40 | 0.27 | 0.26 | 0.94 |
| Kinney Co. | 0.08 | 0.03 | 0.18 | 0.06 | 0.03 | 0.39 |
| Kleberg Co. | 1.27 | 0.87 | 0.98 | 0.43 | 0.33 | 3.89 |
| Lubbock Co. | --- | 0.02 | 0.01 | --- | 0.01 | 0.03 |
| Maverick Co. | 0.93 | 0.78 | 0.71 | 0.44 | 0.19 | 3.05 |
| McLennan Co. | 0.15 | 0.12 | 0.09 | 0.03 | 0.08 | 0.46 |
| Medina Co. | --- | 0.01 | --- | --- | --- | 0.01 |
| Presidio Co. | 0.11 | 0.06 | 0.03 | 0.07 | 0.01 | 0.27 |
| Travis Co. | 0.09 | 0.20 | --- | --- | --- | 0.29 |
| Tarrant Co. | --- | --- | --- | --- | >0.01 | >0.01 |
| Val Verde Co. | --- | 0.02 | --- | --- | --- | 0.02 |
| Zapata Co. | --- | --- | --- | --- | 0.01 | 0.01 |
| Total | \$11.77 | \$11.07 | \$ 6.82 | \$ 7.04 | \$ 4.71 | \$ 41.41 |
| SWBPI Totals | \$38.97 | \$38.55 | \$28.28 | \$28.00 | \$27.33 | \$161.13 |

Source: Office of Justice Programs



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

MAR 18 2008

MEMORANDUM TO: Glenn A. Fine
Inspector General
United States Department of Justice

THROUGH: Raymond J. Beaudet
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice

FROM: *Bill M. Barry for*
Jeffrey L. Sedgwick
Acting Assistant Attorney General

SUBJECT: Response to Office of the Inspector General's Draft Audit Report,
Southwest Border Prosecution Initiative Reimbursement Program

This memorandum provides a response to the recommendations directed to the Office of Justice Programs (OJP) included in the Office of the Inspector General's (OIG's) draft audit report entitled, *Southwest Border Prosecution Initiative Reimbursement Program*.

The draft audit report contains 13 recommendations and no questioned costs directed to the OJP. Because the Southwest Border Prosecution Initiative (SWBPI) application cycle for the first and second quarter of fiscal year (FY) 2008 will be opening in April 2008, with subsequent quarters opening as scheduled and to ensure the applicants continue to receive funding in a timely manner, the Bureau of Justice Assistance (BJA) will continue development with system changes to be fully operational in FY 2009 application cycle. For ease of review, the draft audit report recommendations are restated in bold and are followed by OJP's response.

- 1. Require SWBPI recipients to submit a list of cases in support of the reimbursement requests. This list should include sufficient information to verify the eligibility of the cases submitted for reimbursement, including: (1) case number; (2) defendant name; (3) arrest date; (4) disposition date; (5) initiating federal law enforcement agency; and (6) referring federal agency. Additionally, for pre-trial detention reimbursements the case list should include the defendant booking date and release date.**

The Office of Justice Programs agrees with the recommendation. The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle.

2. **Review the reimbursement requests and the supporting case list to ensure that the number of cases submitted for reimbursement is accurate and that all cases submitted are eligible for reimbursement.**

The Office of Justice Programs agrees with the recommendation. The BJA will implement changes to the SWBPI system that will facilitate the review of reimbursement requests and case information for the SWBPI program. The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle.

3. **Conduct monitoring activities of SWBPI recipients to: (1) ensure compliance with the programmatic, administrative, and fiscal requirements of relevant statutes, regulations, policies, and guidelines; (2) provide guidance on OJP policies and procedures, program requirements, general federal regulations, and basic programmatic, administrative, and reporting requirements; and (3) identify and resolve problems that may impede the effective administration of the program.**

The Office of Justice Programs agrees with the recommendation. The BJA and the Office of the Chief Financial Officer (OCFO) will develop and implement programmatic and financial monitoring guidelines for SWBPI recipients. The BJA and OCFO anticipate completing the monitoring guidelines by September 30, 2008.

4. **Require that SWBPI recipients provide and maintain data on the actual prosecution and detention costs for SWBPI cases.**

The Office of Justice Programs agrees with the recommendation. The BJA will implement changes to the SWBPI system that will facilitate the collection of prosecution and detention cost information for SWBPI cases. The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle. In FY 2008, BJA will also coordinate a discussion with selected grantees regarding the collection of prosecution and detention costs for SWBPI cases.

5. **Adjust SWBPI reimbursement amounts to more accurately reflect actual costs based on the cost data provided by SWBPI participants.**

The Office of Justice Programs agrees with the recommendation. The BJA will implement changes to the SWBPI system to ensure that SWBPI reimbursement amounts are adjusted to more accurately reflect costs based on the cost data provided by SWBPI participants. The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle.

6. **Eliminate the “both” category and require SWBPI jurisdictions to submit prosecution and pre-trial detention reimbursement requests separately.**

The Office of Justice Programs agrees with the recommendation. The BJA will eliminate the “both” category for SWBPI, and revise instructions to SWBPI jurisdictions to require that prosecution and pre-trial detention reimbursement requests be submitted separately. The BJA anticipates revising the guidance to the SWBPI jurisdictions for the FY 2009 SWBPI application cycle.

7. **Ensure that reimbursements for prosecution services are based on the time and effort spent on prosecuting the case rather than the number of days the case was open.**

The Office of Justice Programs agrees with the recommendation. The BJA will implement changes to the SWBPI system to request that applicants submit requests for time and effort spent on cases. The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle. In FY 2008, BJA will also coordinate a discussion with selected grantees regarding how time and effort data can best be captured for SWBPI cases.

8. **Ensure that pre-trial detention reimbursements are based on the actual number of days the defendant was detained.**

The Office of Justice Programs agrees with the recommendation. The BJA will implement changes to the SWBPI system to request detention data for SWBPI applicants (number of detention days). The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle.

9. **Ensure that pre-trial detention reimbursements are based on the jurisdictions actual daily detention rate.**

The Office of Justice Programs agrees with the recommendation. The BJA will implement changes to the SWBPI system to ensure that pre-trial detention reimbursements are based on the jurisdictions daily detention rate. The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle.

10. **Ensure that SWBPI recipients maintain sufficient documentation to support reimbursements, when combined with other federal prosecution and pre-trial detention funding, do not exceed 100 percent of the costs to prosecute SWBPI cases.**

The Office of Justice Programs agrees with the recommendation. The BJA will issue guidance to SWBPI recipients, requiring that documentation be maintained to support that SWBPI reimbursements, when combined with other Federal prosecution and pre-trial detention funding, do not exceed 100 percent of the prosecution and detention costs for SWBPI cases. The BJA anticipates issuing the guidance by June 2008.

11. **Ensure that SWBPI recipients make the necessary adjustments to SWBPI applications to account for other federal prosecution and pre-trial detention funding.**

The Office of Justice Programs agrees with the recommendation. The BJA will implement changes to the SWBPI system to better capture other federal funding applicants might be receiving, if any, on SWBPI cases. The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle.

12. **Review SWBPI reimbursement applications to identify any potential duplicate funding.**

The Office of Justice Programs agrees with the recommendation. The BJA will implement changes to the SWBPI system that will facilitate the review of SWBPI reimbursement applications to identify potential duplicate funding. The BJA anticipates implementing the changes to the SWBPI system for the FY 2009 SWBPI application cycle.

13. **Provide training to the participating jurisdictions on the SWBPI guidelines.**

The Office of Justice Programs agrees with the recommendation. The BJA will work on the development of an online training program for the participating jurisdictions on the SWBPI guidelines during FY 2008 and will finalize for the FY 2009 SWBPI application cycle.

Thank you for your continued cooperation. If you have any questions regarding this response, please contact LeToya Johnson, Deputy Director, Office of Audit, Assessment, and Management – Audit and Review Division, on (202) 514-0692.

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Deputy Assistant Attorney General
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Assistant Director, Audit Liaison Group
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**ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

1. **Resolved.** This recommendation can be closed when we receive documentation supporting that OJP has implemented requirements that SWBPI recipients submit a list of cases in support of the reimbursement requests. This list should include sufficient information to verify the eligibility of the cases submitted for reimbursement, including: (1) case number, (2) defendant name, (3) arrest date, (4) disposition date, (5) initiating federal law enforcement agency, and (6) referring federal agency. Additionally, for pre-trial detention reimbursements the case list should include the defendant booking date and release date.
2. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the SWBPI system has been modified to facilitate reviews of the reimbursement requests and supporting case information to ensure that the number of cases submitted for reimbursement is accurate and that all cases submitted are eligible for reimbursement.
3. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that programmatic and financial monitoring guidelines for SWBPI recipients have been developed and implemented to: (1) ensure compliance with the programmatic, administrative, and fiscal requirements of relevant statutes, regulations, policies, and guidelines; (2) provide guidance on OJP policies and procedures, program requirements, general federal regulations, and basic programmatic, administrative, and reporting requirements; and (3) identify and resolve problems that may impede the effective administration of the program.
4. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the SWBPI system has been modified to facilitate the collection of actual prosecution and detention costs for SWBPI cases.

5. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the SWBPI system has been modified to ensure that SWBPI reimbursement amounts are adjusted to more accurately reflect actual costs based on the cost data provided by SWBPI participants.
6. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the “both” category has been eliminated and the instructions to SWBPI jurisdictions have been revised to require that prosecution and pre-trial detention reimbursement requests be submitted separately.
7. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the SWBPI system has been modified to ensure that reimbursements for prosecution services are based on the time and effort spent on prosecuting the case rather than the number of days the case was open.
8. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the SWBPI system has been modified to request detention data for SWBPI applicants and ensure that pre-trial detention reimbursements are based on the actual number of days the defendant was detained.
9. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the SWBPI system has been modified to ensure that pre-trial detention reimbursements are based on the jurisdiction’s actual daily detention rate.
10. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that new guidance has been issued to SWBPI recipients requiring that documentation be maintained to support that SWBPI reimbursements, when combined with other federal prosecution and pre-trial detention funding, do not exceed 100 percent of the prosecution and detention costs for SWBPI cases.
11. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the SWBPI system has been modified to better capture other federal prosecution and pre-trial detention funding received by SWBPI applicants to ensure that SWBPI recipients make the necessary adjustments to SWBPI applications to account for other federal funding received for SWBPI cases.

12. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that the SWBPI system has been modified to facilitate the review of SWBPI reimbursement applications to identify potential duplicate funding.

13. **Resolved.** This recommendation can be closed when OJP provides documentation supporting that an online training program, specific to the SWBPI guidelines, for the participating jurisdictions has been developed and implemented.