



Department of Homeland Security Office of Inspector General

The Performance of 287(g) Agreements FY 2011 Update





Homeland
Security

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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

This report addresses the progress made toward implementing recommendations from our prior reports, OIG-10-63, *The Performance of 287(g) Agreements*, issued March 2010, and OIG-10-124, *The Performance of 287(g) Agreements Report Update*, issued September 2010. We also address the challenges in conducting inspection reviews of 287(g) agreements. The report is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "Carlton I. Mann".

Carlton I. Mann

Assistant Inspector General for Inspections

Table of Contents/Abbreviations

Executive Summary	1
Background.....	2
Results of Review	4
ICE Needs To Continue Efforts To Implement OIG Recommendations Regarding 287(g) Program Operations	5
Challenges for the 287(g) Inspections Unit Need To Be Addressed	6
Training Program for 287(g) Inspectors Does Not Ensure Appropriate Skill Levels for Conducting Reviews	6
Recommendations.....	9
Inspection Tools Need To Be Refined.....	9
Recommendations.....	12
Ambiguities in MOA Requirements Do Not Facilitate Inspection Review Assessments	12
Recommendations.....	15
ERO 287(g) Program Office Needs To Establish Procedures for Processing 287(g) Inspection Reports	15
Recommendation	16
Reallocation of 287(g) Funds.....	16
Recommendations.....	17
Management Comments and OIG Analysis	17

Appendices

Appendix A: Purpose, Scope, and Methodology.....	25
Appendix B: Management Comments to the Draft Report	26
Appendix C: Status of Recommendations From Prior OIG Reports	35
Appendix D: Major Contributors to this Report.....	43
Appendix E: Report Distribution	44

Abbreviations

DHS	Department of Homeland Security
ENFORCE	Enforcement Case Tracking System
ERO	Enforcement and Removal Operations
FOD	Field Office Director

FY	fiscal year
ICE	U.S. Immigration and Customs Enforcement
LEA	law enforcement agency
MOA	Memorandum of Agreement
OBPP	Office of Budget and Program Performance
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPR	Office of Professional Responsibility
SAC	Special Agent in Charge

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

Section 287(g) of the *Immigration and Nationality Act*, as amended, authorizes the Department of Homeland Security's Immigration and Customs Enforcement (ICE) to delegate federal immigration enforcement authorities to state and local law enforcement agencies. The *Department of Homeland Security Appropriations Act, 2010*, requires, and House Report 111-157 and Conference Report 111-298 direct, that we report on the performance of 287(g) agreements with state and local authorities.

This report is an update to OIG-10-63, *The Performance of 287(g) Agreements*, issued in March 2010, and OIG-10-124, *The Performance of 287(g) Agreements Report Update*, issued September 2010. Those reports included a total of 49 recommendations to strengthen management controls and improve oversight of 287(g) program operations.

In this review, we determined that ICE needs to continue efforts to implement our prior recommendations. In addition, we identified challenges that may reduce the effectiveness of a review process intended as a resource for ensuring compliance with 287(g) program requirements. ICE needs to (1) provide training for inspectors to ensure that they have sufficient knowledge of the 287(g) Program, the Memorandum of Agreement with the state and local law enforcement agencies, and other skills needed to conduct effective inspection reviews; (2) develop and implement comprehensive analytical tools for use as part of the inspection review process; and (3) review and revise the Memorandum of Agreement with participating law enforcement agencies to ensure a clear understanding of 287(g) program requirements.

We are making 13 recommendations for ICE to improve overall operations of the 287(g) program. Immigration and Customs Enforcement concurred with 12 of the recommendations.

Background

In September 1996, Congress authorized the executive branch to delegate immigration enforcement authorities to state and local government agencies. The *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*¹ amended the *Immigration and Nationality Act* by adding section 287(g).² Under this section, the Secretary of Homeland Security is authorized to enter into written agreements with state and local law enforcement agencies (LEAs) to facilitate the delegation of immigration enforcement functions to select law enforcement officers.³ The law requires that this delegation of immigration enforcement authorities be executed through formal written agreements, referred to as a Memorandum of Agreements (MOAs).

MOAs are executed between the Assistant Secretary for ICE and the participating agency's authorized representative. The agreements describe the terms and conditions under which participating LEA personnel will function as immigration officers. Pursuant to these MOAs, designated officers who receive appropriate training and function under the supervision of ICE are permitted to perform immigration law enforcement duties.

The federal government did not enter into any 287(g) agreements between 1996 and 2002. From 2002 to 2006, the Department of Homeland Security (DHS) delegated enforcement authorities to six jurisdictions. After 2006, the 287(g) program expanded as interest in interior immigration enforcement at the state and local levels increased and more dedicated funding for 287(g) program efforts was made available.

MOAs designate the 287(g) program model that jurisdictions are authorized to use. Participating jurisdictions employ a Detention Model, Task Force Officer Model, or both, referred to as the Joint Model.⁴ The Detention Model involves partner agencies exercising their immigration-related authorities only with aliens who are detained. 287(g) officers assigned to a jail or correctional facility identify and initiate immigration proceedings for aliens subject to removal who have been charged with or convicted of an

¹ P.L. 104-208, sec. 133, Sept. 30, 1996.

² Codified at 8 U.S.C. 1357(g).

³ The text of 8 U.S.C. 1357(g) specifically names the Attorney General, rather than the Secretary of Homeland Security, as having this authority. However, this and other immigration enforcement functions of the Immigration and Naturalization Service were transferred to the Department of Homeland Security under the *Homeland Security Act of 2002* (6 U.S.C. 251).

⁴ The name Jail Enforcement Model was changed to Detention Model in the revised MOA.

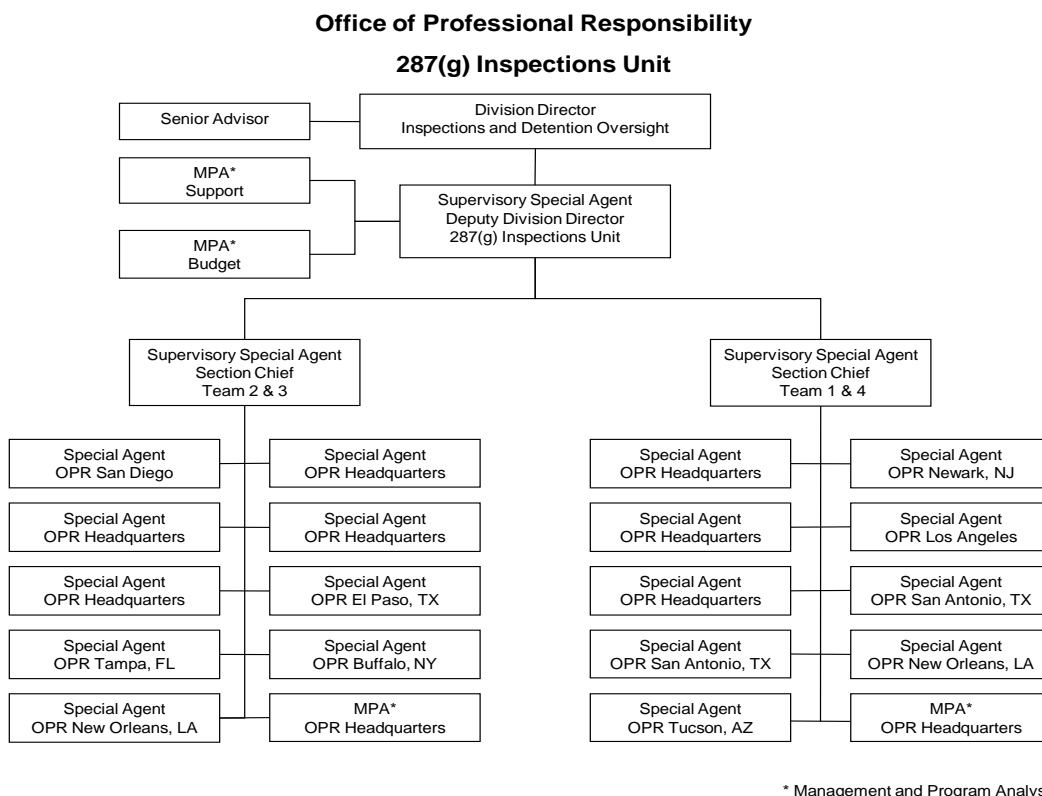
offense. The Task Force Officer Model is composed of partner officers assigned to task force operations, supported by ICE or partner officers in the field who are supervised by ICE. Officers exercise their immigration-related authorities during criminal investigations involving aliens within their jurisdiction or as directed by the ICE Special Agent in Charge (SAC). As of June 1, 2011, ICE had 69 MOAs in 24 states, with 34 Detention Models, 20 Task Force Officer Models, and 15 Joint Models.

In June 2010, management of the 287(g) programs was transferred from the ICE Office of State, Local and Tribal Coordination to the Enforcement and Removal Operations (ERO), Criminal Alien Division. ERO maintains the day-to-day supervision of the 287(g) jail enforcement functions and coordinates with Homeland Security Investigations, which maintains supervisory responsibility over 287(g) task force activities. The ICE Office of the Chief Information Officer furnishes and installs information technology equipment and provides technical support for 287(g) officers' access to DHS systems. The Office of Training and Development designs and delivers 287(g) training.

Within the ICE Office of Professional Responsibility (OPR), the 287(g) Inspections Unit is responsible for assessing the effectiveness of ICE field offices in supervising and supporting 287(g) programs, as well as ICE and LEA compliance with program policies and MOA requirements. Based on recommendations in our prior OIG reports to strengthen management controls and oversight of 287(g) operations, the Inspections Unit was established in October 2010.

The Inspections Unit currently maintains 25 full-time positions in OPR, with 14 positions in Washington, DC, and 11 positions in the regions. The Deputy Division Director for the Inspections Unit and two Section Chiefs manage the Inspections Unit. As shown in figure 1, each Section Chief manages two inspection teams. The results of 287(g) Inspections Unit inspection reviews provide ICE management with information on the administration of the program by local ICE offices and LEAs.

Figure 1. OPR 287(g) Inspections Unit Organizational Chart



Source: ICE OPR 287(g) Inspections Unit.

Results of Review

Our report provides updated information on the status of ICE efforts to address recommendations in our prior reports, *The Performance of 287(g) Agreements* and *The Performance of 287(g) Agreements Report Update*. As a result of recommendations in these reports, along with the need to improve overall operations, the 287(g) Inspections Unit established a dedicated staff of inspectors and a budget analyst position to ensure compliance with legal, regulatory, and MOA requirements. In addition, the inspections process has been enhanced to include detainee interviews and follow-up on previous reviews. The report format was also revised to include additional areas of inspection, analyses of ICE supervision and LEA compliance with the MOA, along with identifying nationwide issues and best practices for improving the 287(g) program.

As part of our review of 287(g) inspections, we identified specific aspects that may further enhance ICE’s ability to achieve program objectives, as well as challenges that may reduce its effectiveness in improving program operations.

ICE Needs To Continue Efforts To Implement OIG Recommendations Regarding 287(g) Program Operations

Our March 2010 report, *The Performance of 287(g) Agreements*, included 33 recommendations for ICE to strengthen management controls, promote effective program operations, and address related risks. ICE concurred with 32 of the recommendations. Based on our analysis of documentation provided by ICE, we have closed 17 recommendations.

Our September 2010 report, *The Performance of 287(g) Agreements Report Update*, included 16 recommendations for ICE to strengthen management controls, improve effective program oversight, and mitigate related risks. ICE concurred with all 16 recommendations. Based on our analysis of the documentation provided by ICE, we have closed 12 recommendations.

To close a recommendation, we must agree with the actions ICE has taken, or plans to take, to resolve our concerns. Corrective actions that ICE has planned or taken for these recommendations included the following:

- Establishing an inspection schedule and risk assessment tool;
- Reviewing 287(g) program expenditures to ensure proper accounting procedures;
- Developing a new Chief Financial Officer Budget Execution Handbook;
- Establishing an OPR Inspections Unit with dedicated positions;
- Developing training for 287(g) inspectors;
- Developing staffing models for field oversight positions;
- Developing a process to review Enforcement Case Tracking System (ENFORCE)⁵ data; and
- Developing a process for correcting and minimizing data entry errors.

Appendix C provides details on the remaining 20 open recommendations.

ICE has improved in some areas of program operations. However, for other important areas, ICE has provided action plans and related documentation that do not address all critical issues we identified in our prior reports.

The 287(g) program provides benefits to enhance the safety and security of participating communities, as well as challenges for ICE that may reduce the program's effectiveness. Implementing corrective actions

⁵ ENFORCE is the primary administrative case management system for ICE.

described in our reports should enable ICE to achieve more effective, efficient, and economical program operations. Thus, we will continue to monitor ICE's efforts to implement our recommendations.

Challenges for the 287(g) Inspections Unit Need To Be Addressed

In October 2011, OPR established the 287(g) Inspections Unit to assess conformance with conditions of MOAs between ICE and LEAs and provide management with information on the administration of the program by local ICE offices and LEAs. With the implementation of a new staffing model and dedicated inspectors, the number of inspections and the scope of their inspection reviews have increased. However, we observed a need for (1) more comprehensive training for inspectors, (2) improved inspection tools, and (3) increased supervision for 287(g) Inspections Unit team members to maximize the effectiveness and efficiency of inspection reviews.

As part of our review, we observed 287(g) inspectors conducting onsite reviews at two LEAs—a Detention Model and a Task Force Officer Model. Fieldwork consisted of observing interviews with LEA officers and managers, ICE officials, and detainees. We also observed their review of selected Alien Files to assess compliance with terms of the MOA and ICE policies.

Training Program for 287(g) Inspectors Does Not Ensure Appropriate Skill Levels for Conducting Reviews

Because of the sensitivity of issues surrounding the 287(g) program, the inspection process is a primary tool for assessing compliance with MOAs to ensure that program goals are achieved. As such, proper training in MOA and 287(g) program requirements is critical. However, we identified several areas in the training for 287(g) inspectors that need to be enhanced to ensure that they have an appropriate level of knowledge and related skills.

Formal Training

As part of the organizational changes, OPR staffed the 287(g) Inspections Unit primarily with former investigators from Homeland Security Investigations. In December 2010, OPR conducted a 3-day training seminar to provide the newly hired inspectors with an overview of the 287(g) program and the inspection process. Inspectors who attended the training seminar informed us that it provided a basic understanding of the 287(g)

program. However, the training did not include instruction in critical skills needed as part of the review process, such as interviewing techniques, report writing, and specific training on the inspection process.

Participation in the December 2010 training seminar was mandatory for all 287(g) inspectors. However, as of July 2011, OPR had hired three new inspectors who have not received any formal training.

To assess whether the goals of the 287(g) program are being achieved, inspectors must have a keen understanding of MOA requirements. However, inspectors informed us that while the 3-day formal training seminar was useful, it did not prepare them for the practical requirements of conducting inspections. In addition, another OPR inspector said that the effectiveness of interviews during 287(g) reviews depends on inspectors' knowledge of the MOA. However, during our fieldwork, we observed instances where inspectors were unfamiliar with certain aspects of the inspection process, 287(g) criteria, and MOA program requirements.

The 3-day training seminar devoted 1 hour of instruction to understanding and interpreting the MOA. We also noted that the training seminar included a half-hour segment on the inspection process, although most of the inspectors relied on this training to obtain an understanding of the 287(g) program. Several inspectors suggested that it would be beneficial to expand this topic so they could understand the process better before conducting an inspection.

We concluded that additional training would enable inspectors to better assess compliance with 287(g) and MOA provisions. An OPR supervisor said that OPR is in the process of revising the training materials and developing lessons learned. However, a timeframe has not been established for completing these tasks.

On-the-Job Training

To facilitate training, OPR supervisors said that inspectors with no prior experience in the review process are assigned to inspection teams with inspectors who have prior experience in conducting inspection reviews. Experienced inspectors are expected to train inspectors who are new to the inspection process. However, a process for ensuring that inspectors receive on-the-job training as a means for bridging any knowledge gaps has not been established. As a result, we observed varying practices for providing on-the-job training that resulted in varying levels of effectiveness.

We observed that inspectors vary considerably in their knowledge of the 287(g) program and MOA requirements. For example, some inspectors were unable to conduct reviews of Alien Files, a key component of the inspection process, because they were unfamiliar with related documents. However, this was not addressed as part of their on-the-job training or any other training curriculum. An ERO 287(g) program manager expressed concern that inspectors may not have sufficient familiarity and experience with all 287(g) program requirements, and may need additional training to be effective in assessing compliance with the MOA.

During our fieldwork, supervisors did not accompany the teams during inspections. At that time, there was only one supervisor on board, and a second supervisor had only recently been selected for the position. As part of the inspection process, periodic onsite visits would assist supervisors in evaluating team and individual performance and identifying possible gaps in training.

Interviewing Skills

We observed numerous interviews conducted by inspectors, and identified a need for training in interviewing techniques. Specifically, we noted instances where (1) the manner in which questions were asked, (2) comments made by inspectors in response to answers provided, and (3) the absence of follow-up questions may have limited or influenced the information obtained from LEA and agency officials. We also observed occasions when inspectors provided acceptable answers as part of asking the questions, and interjected personal opinions during discussions related to 287(g) program areas.

OPR staff said that many of the inspectors had investigative backgrounds and should already possess interviewing skills; however, they added that some inspectors could benefit from additional training in interviewing techniques.

Information obtained through interviews is a primary source for determining compliance with MOA requirements. Applying effective interviewing skills enables managers to evaluate and identify best practices, as well as areas where improvements may be needed. Therefore, it is essential that inspectors maintain proficiency in effective interviewing techniques.

Recommendations

We recommend that Immigration and Customs Enforcement:

Recommendation #1: Enhance the current 287(g) training program to provide an appropriate level of coverage for all areas of the 287(g) inspection process and MOA requirements.

Recommendation #2: Establish a process to ensure that formal training is provided to all inspectors.

Recommendation #3: Develop and implement guidance for providing on-the-job training.

Recommendation #4: Establish a process to ensure that inspectors are proficient in interviewing skills.

Recommendation #5: Incorporate periodic supervisory field visits into the inspection process.

Inspection Tools Need To Be Refined

To assess compliance with the MOA, the inspection process includes (1) conducting interviews with LEA program participants and ICE officials and (2) reviewing policies, procedures, case files, statistics, and ENFORCE entries. To accomplish their mission, inspectors use inspection tools such as checklists and questionnaires to conduct interviews and analyze relevant documentation. However, we observed inconsistencies in how inspectors used these tools to conduct inspection reviews. In addition, our review of questionnaires and checklists identified gaps in MOA coverage. As a result, there is reduced assurance that inspectors' assessments of LEA and ICE compliance with the MOA are performed either adequately or consistently.

Inspection Checklists and Questionnaires Should Align With Provisions of the MOA

As part of our review, we evaluated questionnaires used by inspectors to determine compliance with the MOA. Our analysis of 10 questionnaires used for interviewing 287(g) program participants revealed that 52% of the questions required a "yes" or "no" response. Responses to these types of questions may require additional follow-up to satisfy the intent of the questions. However, we observed instances where the inspector did not ask

follow-up questions to determine MOA compliance. For instance, an inspector asked LEA officers about their familiarity with 287(g) reporting requirements. The officers simply answered that they were familiar with these requirements. The inspector did not request further elaboration on the topic, and received no additional information regarding the officers' knowledge of 287(g) reporting requirements or procedures. Therefore, the inspector could not be certain whether the depth of the officers' knowledge was sufficient.

We also identified sections of the MOA that were not covered by the questionnaires. These areas included supervision, prioritization, civil rights standards, complaint procedures, and release of information to the media. Table 1 identifies examples of areas in the MOA that were not covered in the questionnaires.

Table 1. MOA Areas Not Covered in a Questionnaire

MOA Section	OIG Analysis of Question(s) Used To Assess Related MOA Section
Determining the adequacy of ICE supervision in accordance with MOA requirements	Inspection questionnaires and checklists do not verify how OPR determines whether the Field Office Directors/Special Agents in Charge provide LEAs with current DHS policies regarding the arrest and processing of illegal aliens. For Task Force Officer models, it is not clear how OPR determines whether LEAs provide ICE supervisors with operations plans and whether the Special Agents in Charge approve the plans prior to their implementation.
Assessing whether LEAs use 287(g) authorities in accordance with ICE’s priority levels	Since the statistics on all arrests are either not collected by LEAs or do not have to be provided to ICE even if collected, there are no measures for ICE to determine whether all LEA jurisdictions use immigration authorities granted in accordance with ICE prioritization levels as described in appendix D of the MOA.
Evaluating compliance with “Complaint Procedures and Allegations Resolution Procedures”	The MOA specifies requirements and responsibilities for ICE OPR regarding its role in complaint procedures. However, the 287(g) Inspections Unit does not have a questionnaire or a formalized process for related interviews with regional ICE OPR personnel.
Verifying the procedures for release of information to the media and other third parties	Questions and checklists do not address this entire section. Since the MOA requires that the release of statistical information regarding the 287(g) program by LEA be coordinated with the ICE Office of Public Affairs, it is important to develop tools to assess this area.
Checking on credentials for Joint Enforcement Officers	The questionnaire includes a question about task force officers’ credentials. However, no similar question for jail enforcement officers exists.

Source: OIG Analysis.

OPR supervisors said that even though the questionnaires do not cover all aspects of the MOA, inspectors are encouraged to ask additional questions during interviews. However, variations in inspectors’ skills, knowledge of the MOA, and interviewing proficiency may result in minimal follow-up questions and inadequate review coverage.

OPR recently included interviews with detainees as part of the inspection process at LEAs with a Detention Model Program. However, we observed uncertainty among inspectors regarding how many detainees to interview, since this methodology was not

included in the inspection tools. Many of the inspectors we interviewed agreed that inspection tools could be improved, although they are meant to be used as a framework. Specific methodologies for completing certain tasks could be incorporated, as appropriate.

OPR management officials explained that they are improving the analytical tools for conducting inspection reviews. Several Inspections Unit members have been tasked with updating the questions; however, this is a collateral duty, and a specific timeframe for completion has not been established.

The Inspections Unit would benefit from using tools more closely aligned with MOA requirements. In the absence of appropriate tools for assessing compliance with each area of the MOA, the risk of incomplete coverage and inaccurate results is increased.

Recommendations

We recommend that Immigration and Customs Enforcement:

Recommendation #6: Revise the current inspection tools to ensure coverage of all applicable MOA sections.

Recommendation #7: Ensure that inspection tools incorporate appropriate methodologies for specific tasks, including sampling techniques.

Ambiguities in MOA Requirements Do Not Facilitate Inspection Review Assessments

The MOA is the agreement between ICE and the LEA that authorizes qualified state and local law enforcement personnel to perform certain immigration functions. The agreement specifies the terms and conditions under which participating LEA personnel will function as immigration officers. However, our review of the MOAs identified broad-ranging terms and conditions for immigration enforcement, with a limited number of specific requirements regarding daily 287(g) operations. Several MOA provisions use vague terminology or are open to differences in interpretation on whether a specific provision is an option or a requirement. Thus, inspectors have experienced challenges (1) assessing compliance with MOA requirements due to inconsistencies in interpretations, (2) determining how to classify

issues identified during their onsite inspection reviews that may be interpreted as optional or mandatory, and (3) responding to specific questions from LEA and ICE officials regarding MOA requirements.

MOA Language

MOA language that includes terms such as “may” and “should” appears to provide options regarding compliance with specific MOA provisions. For instance, the MOA states that ICE “might” ask the LEAs to provide certain crime statistics for their jurisdiction. As a result, some LEAs feel that they are not required to track crime statistics, and therefore are unable to provide this type of information. ERO officials told us that the vagueness in MOA language has resulted in inadequate information regarding 287(g) prioritization, since ERO cannot compare overall criminal statistics with those related to 287(g) program activities.

An ERO official identified another MOA section that is unclear regarding the use of the interpreter line. Specifically, the MOA identifies the use of the interpreter line as optional, as long as some interpretation is provided to those with limited English proficiency. LEA officers indicated that they often use fellow officers as interpreters during their interviews, or rely on their own linguistic abilities, however limited. However, an inappropriate level of language proficiency could result in misinformation or misinterpretation. ERO officials identified other sections of the MOA for which it was difficult to determine compliance, such as reimbursement of expenses and ICE areas of responsibility.

We also noted examples of where certain phrases such as “should be notified immediately” have been interpreted by some to mean within 24 hours, and by others to mean that notification is required at the time the event occurs. Accordingly, neither ICE nor LEA officials had a clear understanding of this requirement.

Inconsistencies in Classifying Reportable Issues

When assessing compliance with the MOA, inspectors classify problem areas as either deficiencies or areas of concern. According to an OPR manager, a deficiency is a violation of the MOA or other established 287(g) policies. An area of concern is a situation that could develop into a violation, or when ICE or LEAs are not aware of policies or the MOA requirement, but a violation has not occurred. ICE corrective action plans address remedial action only for reportable items that are defined as deficiencies.

Reportable items identified as areas of concern do not require any corrective action.

An area of concern also refers to a situation where the MOA requirements are unclear because of terms such as “may” or “should” to identify an action, and the LEA did not take the action. In contrast, if the MOA states that a specific action “must” occur and the review identifies that the action was not taken, this should be reported as a deficiency. However, based on our review of inspection reports, classifying a problem as either a deficiency or area of concern has not been done consistently.

Inspections staff indicated that because several terms in the MOA are subject to interpretation, there have been inconsistencies in determining whether an action is a requirement or an option. This has resulted in situations where inspectors and managers disagreed about how MOA language should be interpreted and whether a finding should be classified as an area of concern or a deficiency. For example, during an inspection that we observed, the inspection team identified a potential violation and documented it as an area of concern. However, this issue was subsequently omitted from the final report because of different opinions about whether there was a violation, due to unclear MOA language. According to inspectors, differences of opinion have occurred previously.

We analyzed inspection reports completed since January 2011 and noted that the same violations were classified differently. Specifically, three reports classified problems identified with reporting encounters with individuals who claim U.S. citizenship as a deficiency, while six reports classified the same problems as an area of concern. In addition, violations in complaint procedures were classified as a deficiency in one report, but as an area of concern in five other reports.

We also identified inconsistent guidance from supervisors regarding the classification of deficiencies from one review to another, since direction was provided on a case-by-case basis. For example, on different occasions, supervisors provided conflicting guidance on whether to classify the same MOA noncompliance as a deficiency or an area of concern. This decision affects whether a corrective action plan is developed to correct the noncompliance.

OPR officials reported that they are developing definitions to improve consistency in classifying issues identified during inspections. However, a timeframe for this effort has not been established.

ICE officials said that certain language in the MOA is intended to allow for flexibility. However, clear and precise language would (1) eliminate the need to interpret program requirements, (2) provide a more definitive measure for assessing MOA compliance, and (3) ensure that corrective action plans are established, as needed, to improve program compliance.

Recommendations

We recommend that Immigration and Customs Enforcement:

Recommendation #8: Assess the current MOA to identify language that does not (1) clearly specify program requirements or (2) provide a measurable standard for assessing compliance.

Recommendation #9: Develop MOA language that clearly specifies program requirements, provides a measurable standard for assessing compliance, and eliminates the need to interpret program requirements.

Recommendation #10: Develop and standardize definitions for determining the appropriate classification for issues identified as a deficiency or area of concern.

ERO 287(g) Program Office Needs To Establish Procedures for Processing 287(g) Inspection Reports

From January to June 2011, the OPR 287(g) Inspections Unit forwarded 15 Inspection Reports to the ERO 287(g) Program Office for review and distribution. However, as of June 20, 2011, 14 of these reports remain in ERO. An ERO official indicated that the delay was due to the Program Office revising its process for tasking ICE field offices with developing corrective action plans.

According to ERO officials, they are evaluating the review process, with an emphasis on shortening the timeframe for corrective action plans and resolving deficiencies. However, at the conclusion of our fieldwork, procedures had not been issued, and field offices where inspections had been completed had not received the related inspection report.

Recommendation

We recommend that Immigration and Customs Enforcement:

Recommendation #11: Develop a process to ensure that 287(g) Inspection Reports are provided timely to appropriate field offices.

Reallocation of 287(g) Funds

According to OMB Circular A-123, “Management Responsibility for Internal Control,” management is responsible for developing and maintaining effective internal controls to ensure that resources are used consistent with agency missions. In addition, internal controls must be established that reasonably ensure that funds and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation.

Of the total amount appropriated for the 287(g) program in the *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009*, Congress directed \$5 million for 287(g) inspections in Division D of the accompanying Committee Print of the House Committee on Appropriations. In our prior 287(g) report, we made recommendations to improve controls to ensure the appropriate use of 287(g) funds. As a result, ICE has made progress toward developing specific budget codes for 287(g) funds, and developed tracking systems to account for 287(g)-related expenditures. However, recent changes to the budget allocation process have caused concerns regarding efforts to reallocate 287(g) appropriated funds, since Congress stipulated that these funds may not be used for other than 287(g) activities.

In fiscal year (FY) 2010, the responsibility for 287(g) program budget execution was transferred from the Office of State, Local and Tribal Coordination to the ERO Office of Mission Support. Although the ICE Office of Budget and Program Performance continues to allot the 287(g) funds as part of the overall appropriated budget, Mission Support is responsible for approving spend plans for nine separate 287(g) program activities and providing budget support as a liaison between these activities and the Office of Budget and Program Performance.

In February 2011, ERO identified \$11,000,000 in unobligated funds from seven of the nine separate programs to support ERO 287(g)-related activities. Of this amount, \$682,000 was from OPR. Based on interviews with ICE officials, we were unable to

confirm whether (1) specific guidance had been established regarding a reallocation of funds, (2) a reallocation of funds would be used to support specific ERO programs, (3) there would be a method for the affected program areas to receive additional funds from ERO, and (4) any reallocation of funds would be permanent. As of July 2011, a final determination regarding any new funding allocations had not been made.

The Office of State, Local and Tribal Coordination currently receives \$3 million in 287(g) funds. The Chief Financial Office receives \$261,000 to support 287(g)-related activities. These funds were not part of the reallocation process. We have not been provided with supporting documentation to account for 287(g)-related initiatives.

Recommendations

We recommend that Immigration and Customs Enforcement:

Recommendation #12 (revised): Ensure that any reallocation of 287(g) funds complies with Office of Management and Budget (OMB) and DHS policy guidance and relevant administrative controls.

Recommendation #13: Provide a detailed analysis of 287(g)-related activities and associated costs to support their use as intended by appropriation.

Management Comments and OIG Analysis

We evaluated ICE's written comments and have made changes to the report where we deemed appropriate. Below is a summary of ICE's written responses to our recommendations and our analysis of the responses. A copy of the ICE response in its entirety appears in appendix B.

Recommendation #1: Enhance the current 287(g) training program to provide an appropriate level of coverage for all areas of the 287(g) inspection process and MOA requirements.

ICE Response: ICE concurs with Recommendation #1.

In September 2011, OPR will hold a 287(g) Inspection Training Conference for all 287(g) Inspections Unit staff. Training will cover the 287(g) MOA, ICE and partnering agencies' adherence to the MOA, interviewing techniques, the 287(g) Inspections Unit Handbook, civil liberty issues, A-files, ENFORCE processing, interpreting statistics, and inspection reports. The training will also provide instruction regarding best practices for 287(g) programs and ICE offices that supervise them.

OIG Analysis: Based on the review of the Training Conference Agenda, we consider this recommendation **resolved and open** pending completion of the training.

Recommendation #2: Establish a process to ensure that formal training is provided to all inspectors.

ICE Response: ICE concurs with Recommendation #2.

OPR will provide annual training for the 287(g) Inspections Unit to address areas identified by management as needing improvement. If ICE management, Team Leaders, or employees identify a need for additional training to assist 287(g) Inspection employees, OPR will send the individual to additional ICE training. OPR secured eight slots for 287(g) Inspections Unit employees to attend the next session of the ICE Immigration Authority Delegation Program Oversight training in October 2011.

OPR created a draft Roles and Responsibilities Handbook for 287(g) Inspections employees to provide new and existing 287(g) Inspections Unit personnel a foundation for their daily roles and responsibilities in support of the Unit.

OIG Analysis: This recommendation is **resolved and open**. To fully satisfy the intent of this recommendation, ICE also needs to develop a process to document any training needs that are identified, along with actual measures taken to satisfy the specific training needs.

Recommendation #3: Develop and implement guidance for providing on-the-job training.

ICE Response: ICE concurs with Recommendation #3.

OPR will implement permanent Team Leaders for each inspection team. Team Leaders will be responsible for training new members

of their inspection team and providing guidance for all existing members.

New employees will be assigned as observers on initial inspections, and accompany the inspection Team Leader during the pre-inspection planning, inspection, and post-inspection duties. During their second inspection, employees will again be assigned to observe the Team Leader, but will be expected to play a more active role in the inspection. On the third inspection, the new employee will participate in the inspection as a full member of the team, with the Section Chief accompanying the team to evaluate their performance, as well as the performance of other team members during selected inspections.

OIG Analysis: This recommendation remains **unresolved and open**. While the Handbook identifies Team Leaders' responsibility for on-the-job training, specific areas of training for inspectors to ensure appropriate coverage and consistency among teams were not identified.

Recommendation #4: Establish a process to ensure that inspectors are proficient in interviewing skills.

ICE Response: ICE concurs with Recommendation #4.

In September 2011, OPR will hold a 287(g) Inspection Training Conference in Washington, D.C. Two days will be dedicated to interviewing techniques. All 287(g) Inspections Unit employees will also be provided with an annual Performance Plan and Appraisal outlining the individual goals and benchmarks needed to achieve expectations in the 287(g) Inspections Unit. Each plan will include measuring an individual's interviewing skills. Throughout FY 2012, supervisors will assess interview skills by direct observation during inspections, and by reviewing interview notes from inspections not attended by the supervisor.

OIG Analysis: Based in the review of the Training Conference Agenda, we consider this recommendation **resolved and open** pending our receipt, review, and implementation of the training policy. This policy should not only included supervisors' direct observation of employees' interviewing skills during FY 2012, but in subsequent fiscal years as well.

Recommendation #5: Incorporate periodic supervisory field visits into the inspection process.

ICE Response: ICE concurs with Recommendation #5.

In June 2011, 287(g) Inspections Unit Section Chiefs began attending 287(g) reviews in an effort to evaluate team and individual performances and identify possible gaps in training. Section Chiefs attended 2 of the last 13 reviews. ICE will increase the number of supervisory field visits in FY 2012 to accompany inspection teams no less than eight times per fiscal year. The Deputy Division Director will accompany inspection teams no less than four times per fiscal year. These goals will be incorporated into the Performance Plan and Appraisals for Section Chiefs and the Deputy Division Director.

OIG Analysis: This recommendation is **resolved and open** pending our receipt and review of the new Performance Plan and Appraisal for Section Chiefs and the Deputy Division Director.

Recommendation #6: Revise the current inspection tools to ensure coverage of all applicable MOA sections.

ICE Response: ICE concurs with Recommendation #6.

ICE is creating an MOA Measurable Template that highlights all measurable sections of the MOA, and provides guidance and investigative techniques on how Inspection personnel can determine if the LEA and ICE are in compliance. OPR initiated a process to update the interview worksheets to revise and incorporate new questions as well as remove questions no longer relevant to the 287(g) program. OPR also made a concerted effort to create open-ended questions that allow OPR personnel to better identify interviewees' knowledge on specific topics.

OPR created worksheets to provide 287(g) Inspections Unit personnel with a resource to ensure that the same areas of information are collected from each interviewee. Concerns and recommendations made by OIG were incorporated into the interview worksheets that will be provided to all 287(g) Inspections Unit employees in the Roles and Responsibilities Handbook. OPR anticipates having final versions of all interview worksheets by October 31, 2011.

OIG Analysis: This recommendation is **resolved and open** pending our receipt and review of the final OPR 287(g) Inspection Unit MOA Measurable Template and interview worksheets.

Recommendation #7: Ensure that inspection tools incorporate appropriate methodologies for specific tasks, including sampling techniques.

ICE Response: ICE concurs with Recommendation #7.

OPR will create an inspection tool to provide a methodology for determining sampling techniques during individual inspections. The inspection tool will target how many detainees to interview, A-files to review, and LEA and ICE personnel to interview to ensure inclusion of supervisory levels and specific responsibilities such as internal affairs and public information officers. OPR anticipates that the methodology tool will be completed by October 31, 2011.

ICE is creating an MOA Measurable Template and using Microsoft Access to assist 287(g) Inspections Unit personnel with classifying issues identified during a 287(g) inspection as either an area of concern or a deficiency.

OIG Analysis: This recommendation is **resolved and open** pending our receipt and review of the sampling methodology tool, the MOA Measurable Template, and documentation worksheets.

Recommendation #8: Assess the current MOA to identify language that does not (1) clearly specify program requirements or (2) provide a measurable standard for assessing compliance.

ICE Response: ICE concurs with Recommendation #8.

Please reference our response to Recommendation #9.

OIG Analysis: This recommendation is **resolved and open** pending our receipt and review of the assessment results.

Recommendation #9: Develop MOA language that clearly specifies program requirements, provides a measurable standard for assessing compliance, and eliminates the need to interpret program requirements.

ICE Response: ICE concurs with Recommendation #9.

ICE will review the MOA language and assess whether program requirements can be described more clearly, and compliance measures can be defined. Once the assessment has been completed,

ICE will provide the results and any resulting language modifications to the OIG.

OIG Analysis: This recommendation is **resolved and open**, pending our receipt and review of the assessment results.

Recommendation #10: Develop and standardize definitions for determining the appropriate classifications for issues identified as a deficiency or area of concern.

ICE Response: ICE concurs with Recommendation #10.

OPR defines a deficiency as a violation of written policy that can be specifically linked to the terms of the 287(g) MOA, ICE policy, or operational procedure. OPR defines an area of concern as something that may lead to or risk a violation of the terms of the 287(g) MOA, ICE policy, or operational procedure.

OPR is using Microsoft Access to assist 287(g) Inspections Unit personnel with classifying issues identified during a 287(g) inspection as an area of concern or a deficiency. This computer software will use definitions for each area of concern or deficiency, and provide a common naming convention for each issue. OPR has included the definitions for “area of concern” and “deficiency” in its draft Roles and Responsibilities Handbook, and will address the issue at the September training. The definitions will also be included in future 287(g) reports so readers have a better understanding of the terms.

OPR expects to have all of the information from the FY 2011 inspections entered in the software program by October 31, 2011, and expects the program to be operational prior to the first published report for FY 2012.

OIG Analysis: This recommendation is **resolved and open** pending our receipt and review of the final OPR Roles and Responsibilities Handbook, and appropriate documentation to confirm that the software program is operational and ensures consistency with regard to issues identified during inspections.

Recommendation #11: Develop a process to ensure that 287(g) Inspection Reports are provided timely to appropriate field offices.

ICE Response: ICE concurs with Recommendation #11.

Standard operating procedures are being approved for the ICE OPR review process.

OIG Analysis: This recommendation is **resolved and open**, pending our receipt and review of the final standard operating procedures.

Recommendation #12 (revised): Ensure that any reallocation of 287(g) funds complies with Office of Management and Budget (OMB) and DHS policy guidance and relevant administrative controls.

ICE Response: ICE does not concur with Recommendation #12.

The justification for this recommendation is not factually correct. Responsibility for budget execution is under the purview of the Chief Financial Officer and has never been assigned to the Office of State, Local, and Tribal Coordination or the ERO Office of Mission Support. These programs are responsible for implementing the budget. To ensure that funds are spent properly, ICE has issued policy guidance outlining administrative control of funds policies set forth by OMB and DHS, and a Budget Execution Handbook outlining how each ICE program is to implement budget execution processes and procedures.

The handbook includes instructions dealing with allowances and sub-allowances and reiterates that sub-allowances to support a special effort should be made to the specific accounting string so that obligations and disbursements can be tracked and reported as required. Section 10.1 of the handbook includes information that ICE Chief Financial Officer's Office of Budget and Program Performance (OBPP) developed the Project and Task codes for 287(g) tracking that all programs must use. The project code ensures that reports can be easily produced from the financial system showing 287(g) spending across all Program Project Activities, and the task code delineates types of expenditures. OBPP regularly reviews these reports as part of the execution monitoring process, and is able to confirm that funds are used for the purpose intended.

OIG Analysis: ICE did not concur with this recommendation, as originally drafted.

We accept the explanation provided regarding the organizational structure, roles, and responsibilities for budget execution and

implementation, along with information in the handbook on 287(g) project and task code tracking.

As described in this report, ERO identified \$11,000,000 in obligated funds from seven of the nine programs to support a shortfall for ERO 287(g)-related activities. Of this amount, \$682,000 was from OPR. However, we were not provided documentation to determine how or whether any of these funds were used to support ERO program needs. To satisfy this recommendation, ICE needs to provide specific details describing any reallocation of 287(g) funds, and how any ERO shortfall was supported. This recommendation remains **unresolved and open**.

Recommendation #13: Provide a detailed analysis of 287(g)-related activities and associated costs to support their use as intended by appropriation.

ICE Response: ICE concurs with Recommendation #13.

OBPP will work with the 287(g) Project Management Office to provide a detailed analysis of 287(g) funds.

OIG Analysis: This recommendation is **resolved and open** pending our receipt and review of the analysis of 287(g) funds.

Appendix A

Purpose, Scope, and Methodology

We conducted this review in response to the *Department of Homeland Security Appropriations Act, 2010*, and accompanying House Report 111-157 and Conference Report 111-298. Our objectives were to assess (1) the progress ICE has made in addressing our recommendations included in prior reports OIG-10-63, *The Performance of 287(g) Agreements*, and OIG-10-124, *The Performance of 287(g) Agreements Report Update*, and (2) the propriety of OPR's 287(g) Inspections Unit in assessing partnering law enforcement agencies' compliance with 287(g) Memoranda of Agreements.

We conducted our fieldwork from April to June 2011 and interviewed OPR and ERO officials, OPR 287(g) inspectors, and ICE personnel working with the 287(g) program. To assess the effectiveness of OPR's 287(g) Inspections Unit, we observed and evaluated 287(g) inspections of the Cobb County Sheriff's Department in Cobb County, Georgia, and the Herndon Police Department, in Herndon, Virginia.

We also assessed actions ICE has taken to address recommendations from our prior reviews of 287(g) program operations.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the Council of the Inspectors General on Integrity and Efficiency.

Appendix B Management Comments to the Draft Report

Office of the Chief Financial Officer

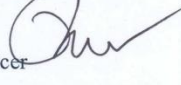
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

September 16, 2011

MEMORANDUM FOR: Carlton I. Mann
Assistant Inspector General for Inspections
Office of Inspector General

FROM: Radha C. Sekar 
Chief Financial Officer

SUBJECT: Management Response to OIG Draft, "The Performance of 287(g)
Agreements FY 2011 Update", dated August 24, 2011

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the draft report. Attached is our response to each of the 13 recommendations. We have reviewed and concur with 12 of the 13 recommendations. ICE will continue working to resolve all identified weaknesses.

ICE does not concur with recommendation 12. The justification for this recommendation is not factually correct. Responsibility for budget execution is under the purview of the ICE Chief Financial Officer (CFO) and has never been assigned to ICE programs. The programs are responsible for implementing the budget. CFO's Office of Budget Program and Performance (OBPP) regularly reviews reports as part of the execution monitoring process and is able to confirm that funds are used for the purpose intended.

Should you have questions or concerns, please contact Michael Moy, OIG Portfolio Manager, at (202) 732-6263, or by e-mail at Michael.Moy@dhs.gov.

Attachments

www.ice.gov

Appendix B

Management Comments to the Draft Report

U.S. Immigration and Customs Enforcement

Performance of 287(g) Agreements - FY 2011 Update

OIG Draft Report – Responses to Recommendations

Recommendation # 1: Enhance the current 287(g) training program to provide an appropriate level of coverage for all areas of the 287(g) inspection process and MOA requirements.

Response # 1: ICE concurs with this recommendation. In September 2011, ICE's Office of Professional Responsibility (OPR) will hold a 287(g) Inspection Training Conference in Washington, D.C. The training, which will be provided to all members of the 287(g) Inspections Unit, is premised on the December 2010 training. The September training will allow OPR management to, among other things, address recommendations made in the FY2011 OIG audit and discuss changes that will be implemented in response to specific OIG recommendations. A copy of the training agenda is being provided for your review.

The training will cover each section of the 287(g) Memorandum of Agreement (MOA) and explain ways for 287(g) Inspections Unit personnel to measure whether or not ICE and the partnering agency adhere to the MOA terms. Additionally, participants will receive extensive training on interviewing techniques that will allow them to perform their jobs more effectively. The training will further review OPR's new draft 287(g) Inspections Unit Roles and Responsibilities Handbook and updated interview worksheets. Instruction will include civil liberty issues that affect the 287(g) program, items to look for when reviewing A-files, ENFORCE processing, interpreting statistics, and writing inspection reports.

The training will also provide instruction regarding "best practices" for 287(g) programs and ICE offices that supervise them. This will allow 287(g) Inspections Unit personnel to share best practices observed during the FY 2011 inspection year. OPR will also discuss ways to improve the inspections process and review best methodologies for conducting future inspections.

ICE requests that this recommendation be considered resolved and open pending completion of the training.

Recommendation # 2: Establish a process to ensure that formal training is provided to all inspectors.

Response # 2: ICE concurs with this recommendation. ICE OPR will continue to provide annual training for the 287(g) Inspections Unit to address areas identified by management as needing improvement. This year's training scheduled for September 2011 will focus on core areas that both OPR management and OIG identified as critical skills. The training will provide instruction on interviewing, report writing, and the 287(g) MOA and its terms.

Appendix B

Management Comments to the Draft Report

U.S. Immigration and Customs Enforcement

Performance of 287(g) Agreements - FY 2011 Update

OIG Draft Report – Responses to Recommendations

If ICE management, Team Leaders, or employees identify a need for additional training to assist 287(g) Inspection employees with areas such as A-File review, ENFORCE processing, understanding immigration law, or understanding the 287(g) MOA or its terms, then OPR will send the individual to additional ICE training. In addition to courses available electronically on ICE's Virtual University site, the ICE Office of Training and Development offers two in-person courses specific to 287(g) that are available to OPR personnel.

The ICE Immigration Authority Delegation Program Oversight (IADPO) course provides three days of training and guidance designed for ICE personnel who manage or oversee 287(g) state, local, or municipal law enforcement officers. The training provides a comprehensive understanding of the 287(g) program and background information on the MOA, as well as an understanding of the roles and responsibilities as 287(g) supervisors. OPR secured slots for eight 287(g) Inspections Unit employees to attend the next session of this training in October 2011, and will seek additional slots as new team members join the Unit.

The ICE Immigration Authority Delegation Program (IADP) course is nineteen days of instruction designed to train state and local law enforcement officers and certify them to enforce federal immigration law. The course provides classes on areas such as statutory authority, nationality law, immigration law, criminal law, A-File preparation, ENFORCE/IDENT, preparing Forms I-213, as well as practical exercises.

OPR has created a draft Roles and Responsibilities Handbook for 287(g) Inspections employees. The purpose of this document is to provide new and existing 287(g) Inspections Unit personnel the foundation for their daily roles and responsibilities in support of the Unit.

ICE requests that this recommendation be considered resolved and open pending publication of the handbook.

Recommendation # 3: Develop and implement guidance for providing on-the-job training.

Response # 3: ICE concurs with this recommendation. ICE OPR will implement permanent Team Leaders for each inspection team. Team Leaders are team members who have exceeded expectations in all core areas of the inspection process to include interviewing and report writing. Team Leaders will be responsible for training new members of their inspection team as well as providing guidance for all existing members.

New employees will be assigned as "observers" on the initial inspections they attend, accompanying the inspection Team Leader during the pre-inspection planning, inspection, and post-inspection duties. During their second inspection, employees will again be assigned to

2

Appendix B

Management Comments to the Draft Report

U.S. Immigration and Customs Enforcement

Performance of 287(g) Agreements - FY 2011 Update

OIG Draft Report – Responses to Recommendations

observe the Team Leader but will be expected to play a more active role in the inspection by taking notes during the interviews and completing initial write-ups for the report. The Team Leader will review these initial write-ups and ensure the work includes all required information and is of sufficient quality. On the third inspection, the new employee will participate in the inspection as a full member of the team, with all of the duties and responsibilities of a team member. During this third inspection, the Section Chief will accompany the inspection team to evaluate the new employee's ability to perform 287(g) Inspections Unit duties. After the inspection, the Section Chief will determine if the individual is fully prepared or if additional training is required.

In addition to this plan for on-the-job training for new employees, OPR supervisors will observe all employees during selected inspections. This will give supervisors the opportunity to provide timely feedback to employees, including any specific training needed during the inspections.

ICE requests that this recommendation be considered resolved and open pending implementation of the Team Leader and Section Chief policy.

Recommendation # 4: Establish a process to ensure that inspectors are proficient in interviewing and report-writing skills.

Response # 4: ICE concurs with this recommendation. In mid-September 2011, ICE will hold a 287(g) Inspection Training Conference in Washington, D.C. Two days will be dedicated to interviewing techniques.

Interview training will be provided by a private company that specializes in interview techniques. During the two-day training, personnel will be taught best practices for obtaining information from interviews. Classes include techniques for conducting interviews more effectively, conducting non-accusatory interviews to evaluate truthfulness, factual analysis and its application in interviews, interpretation of verbal and physical behavior, and non-confrontational interviews. ICE OPR has requested that the training be tailored to focus on non-confrontational type interviews, similar to those conducted by 287(g) personnel.

All 287(g) Inspections Unit employees will also be provided with an annual Performance Plan and Appraisal outlining the individual goals and benchmarks needed to achieve expectations in the 287(g) Inspections Unit. Each plan will include measuring an individual's interviewing skills. Throughout FY2012, supervisors will assess interview skills by direct observation during inspections, and by reviewing interview notes from inspections not attended by the supervisor.

3

Appendix B

Management Comments to the Draft Report

U.S. Immigration and Customs Enforcement
Performance of 287(g) Agreements - FY 2011 Update
OIG Draft Report – Responses to Recommendations

ICE requests that this recommendation be considered resolved and open pending implementation of the training policy.

Recommendation # 5: Incorporate periodic supervisory field visits into the inspection process.

Response # 5: ICE concurs with this recommendation. In June 2011, ICE 287(g) Inspections Unit Section Chiefs began attending 287(g) reviews in an effort to evaluate team and individual performances and identify possible gaps in training. Section Chiefs attended two of the last 13 reviews. ICE will increase the number of supervisory field visits in FY2012 in an effort to accompany inspection teams no less than eight times per fiscal year. The Deputy Division Director will accompany inspections no less than four times per fiscal year. These goals will be incorporated into the Performance Plan and Appraisals for Section Chiefs and the Deputy Division Director.

ICE requests that this recommendation be considered resolved and open pending implementation of the performance plan.

Recommendation # 6: Revise the current inspection tools to ensure coverage of all applicable MOA sections.

Response # 6: ICE concurs with this recommendation. ICE OPR recognized a need for a reference tool that would provide 287(g) Inspections Unit personnel with a document that identifies areas within each section of the 287(g) Memorandum of Agreement (MOA) that require compliance. ICE is creating an MOA Measurable Template that highlights all measurable sections of the MOA, and provides guidance and investigative techniques on how Inspection personnel can determine if the LEA and ICE are in compliance with these MOA terms. ICE has provided a draft copy of the MOA Measurable Template for your review and anticipates having a final version completed by October 31, 2011.

ICE OPR also reviewed the interview worksheets provided to OIG as part of their inspection. During the review, OPR identified areas that were not covered; as well as, questions no longer applicable to the 287(g) MOAs signed in 2009. OPR initiated a process to update the interview worksheets to revise and incorporate new questions as well as remove questions no longer relevant to the 287(g) program. OPR also made a concerted effort to create open-ended questions that allow OPR personnel to better identify interviewees' knowledge on specific topics.

Appendix B

Management Comments to the Draft Report

U.S. Immigration and Customs Enforcement
Performance of 287(g) Agreements - FY 2011 Update
OIG Draft Report – Responses to Recommendations

OPR created the worksheets to provide 287(g) Inspections Unit personnel with a resource to ensure the same relevant areas of information are collected from each interviewee type; this provides more focus than a conversational approach, but still allows a degree of freedom and adaptability in obtaining information from the interviewee. As always, the interviewer is reminded to conduct follow-up questions to further investigate individual responses. OPR reviewed the OIG draft report and incorporated concerns and recommendations made by OIG into the interview worksheets. The worksheets will be provided to all 287(g) Inspections Unit employees in the Roles and Responsibilities Handbook. OPR anticipates having final versions of all interview worksheets by October 31, 2011.

ICE requests that this recommendation be considered resolved and open pending publication of the Handbook.

Recommendation # 7: Ensure that inspection tools incorporate appropriate methodologies for specific tasks, including sampling techniques.

Response # 7: ICE concurs with this recommendation. ICE OPR will create an inspection tool to provide a methodology for determining sampling techniques during individual inspections. The inspection tool will target how many detainees to interview, how many A-file reviews to conduct, and how many LEA and ICE personnel to interview to ensure inclusion of supervisory levels and specific responsibilities such as internal affairs and public information officers. OPR anticipates the methodology tool will be completed by October 31, 2011.

ICE is creating an MOA Measurable Template that highlights all measurable sections of the MOA, and provides guidance and investigative techniques on how Inspection personnel can determine if the LEA and ICE are in compliance with these MOA terms. ICE has provided a DRAFT copy of the MOA Measurable Template for your review and anticipates having a final version completed by October 31, 2011. ICE is also using Microsoft Access to assist 287(g) Inspections Unit personnel with classifying issues identified during a 287(g) inspection as either an area of concern or a deficiency. This computer software will use definitions for each area of concern or deficiency and provide a common naming convention for each issue, ensuring OPR is providing consistent information from one inspection to the next regarding issues identified. Further, OPR has initiated a process to update 287(g) Inspections Unit interview worksheets to revise and incorporate new questions as well as remove questions no longer relevant to the 287(g) program. OPR also made a concerted effort to create open-ended questions that allow OPR personnel to better identify interviewees' knowledge on specific topics. We have attached a draft copy of the MOA Measurable Template.

5

Appendix B

Management Comments to the Draft Report

U.S. Immigration and Customs Enforcement

Performance of 287(g) Agreements - FY 2011 Update

OIG Draft Report – Responses to Recommendations

ICE requests that this recommendation be considered resolved and open pending publication of the new inspection tool and Template.

Recommendation # 8: Assess the current MOA to identify language that does not (1) clearly specify program requirements or (2) provide a measurable standard for assessing compliance.

Response # 8: ICE concurs with this recommendation. Please reference our response to recommendation # 9.

ICE requests that this recommendation be considered resolved and open pending completion of the assessment.

Recommendation # 9: Develop MOA language that clearly specifies program requirements, provides a measurable standard for assessing compliance, and eliminates the need to interpret program requirements.

Response # 9: ICE concurs with this recommendation. ICE will review the MOA language and assess if program requirements can be described more clearly and if compliance measures can be defined. Once our assessment has been done, we will provide the results of our assessment and any resulting language modifications to the OIG.

ICE requests that this recommendation be considered resolved and open pending completion of the assessment and implementation of any needed MOA changes.

Recommendation # 10: Develop and standardize definitions for determining the appropriate classification for issues identified as a deficiency or area of concern.

Response # 10: ICE concurs with this recommendation. ICE defines a deficiency as a violation of written policy that can be specifically linked to the terms of the 287(g) MOA or to ICE policy or operational procedure. ICE defines an area of concern as something that may lead to or risk a violation of the terms of the 287(g) MOA or ICE policy or operational procedure.

ICE requests that this recommendation be considered resolved and closed.

If OPR determines an LEA or ICE component is not aware of or not following the terms of certain sections of the MOA or ICE policy or operational procedures, however no violation has occurred in practice, OPR will identify that issue as an area of concern. For example, if OPR discovers the LEA's internal affairs division is unaware of the MOA's requirements for reporting

6

Appendix B

Management Comments to the Draft Report

U.S. Immigration and Customs Enforcement

Performance of 287(g) Agreements - FY 2011 Update

OIG Draft Report – Responses to Recommendations

misconduct allegations to ICE, but there have not been any misconduct issues to report, then OPR will categorize the LEA's not knowing the terms of the MOA as an area of concern.

OPR is using Microsoft Access to assist 287(g) Inspections Unit personnel with classifying issues identified during a 287(g) inspection as either an area of concern or a deficiency. This computer software will use definitions for each area of concern or deficiency and provide a common naming convention for each issue, ensuring OPR is providing consistent information from one inspection to the next regarding issues identified. OPR is using areas of concern and deficiencies identified from the FY2011 inspections to populate the software program. As new areas of concern or deficiencies are identified during inspections, any new information will be added to the software program. OPR expects to have all of the information from the FY2011 inspections entered in the software program by October 31, 2011 and for the program to be operational prior to the first published report for FY2012.

OPR has included the definitions for "area of concern" and "deficiency" in its draft Roles and Responsibilities Handbook. OPR will also address the issue at the September training during the "Inspection Report Writing" and "OIG Report Review" blocks of instruction. This will ensure inspection unit personnel have a firm understanding of the terms and when to categorize something as a deficiency or an area of concern. These definitions also will be included in future 287(g) reports so readers have a better understanding of the terms.

Recommendation # 11: Develop a process to ensure that 287(g) Inspection Reports are provided timely to appropriate field offices.

Response # 11: ICE concurs with this recommendation. Standard Operating Procedures are being approved for the ICE OPR review process.

ICE requests that this recommendation be considered resolved and open pending completion of Standard Operating Procedures.

Recommendation # 12: Ensure that any reallocation of 287(g) funds complies with the intent of the *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009*.

Response # 12: ICE does not concur with this recommendation. The justification for this recommendation is not factually correct. Responsibility for budget execution is under the purview of the Chief Financial Officer and has never been assigned to the Office of State, Local, and Tribal Coordination or the ERO Office of Mission Support. These programs are responsible for implementing the budget. To ensure that funds are spent properly, ICE has issued:

7

Appendix B

Management Comments to the Draft Report

OIG Draft Report – Responses to Recommendations

- (1) policy guidance outlining administrative control of funds policies set forth by OMB and DHS, and
- (2) a Budget Execution Handbook outlining how each ICE program is to implement budget execution processes and procedures.

The handbook includes specific instructions dealing with allowances and sub-allowances and reiterates that if a Program Office has received funds to support a special effort, sub-allowances should be made to the specific accounting string so that obligations and disbursements are able to be tracked and reported as required. In Section 10.1, the handbook specifically illustrates: “For example, OBPP (ICE CFO’s Office of Budget and Program Performance) developed the Project and Task codes for 287(g) tracking that all programs must use. The project code ensures reports can be easily produced from the financial system showing 287(g) spending across all PPAs (Program Project Activity) and the task code further delineates types of expenditures. OBPP regularly reviews these reports as part of the execution monitoring process and is able to confirm that funds are used for the purpose intended.

ICE requests that this recommendation be considered resolved and closed.

Recommendation # 13: Provide a detailed analysis of 287(g)-related activities and associated costs to support their use as intended by appropriation.

Response # 13: ICE concurs with this recommendation. ICE OCFO’s Office of Budget and Program Performance (OBPP) will work with the 287(g) Project Management Office (PMO) to provide a detailed analysis of the 287(g) fund. All programs receiving 287(g) funds are required to submit Spend Plans to OBPP detailing their planned activities and associated costs for the year. OBPP crosschecks all staffing plans and general expenses to the appropriate corresponding dollars and OMB object class on the spend plan to ensure that planned expenditure of funds correlates to its intended use. For example, the purpose of Custody Ops funding is for beds and related costs. OBPP would examine the spend plan to ensure that GE funds are aligned with object class code 25.4 which represents facilities for beds. At a minimum, execution reviews are scheduled quarterly to review 287(g) activity and OBPP performs a bi-weekly analysis during which actual obligations/expenditures are compared to the spend plans.

ICE requests that this recommendation be considered resolved and open pending production of a detailed analysis.

Appendix C

Status of Recommendations From Prior OIG Reports

Status of Recommendations from Prior OIG Report OIG-10-63, *The Performance of 287(g) Agreements, dated March 2010*

Summary:

33 Total Recommendations

17 Closed

12 Resolved and open

4 Unresolved and open

Recommendation #2: Develop procedures to ensure that 287(g) resources are allocated according to ICE's priority framework.

ICE Response: Establish a policy and document corrective actions if a 287(g) program is not operating according to ICE priorities. The policy will include actions that the Special Agents in Charge (SACs and Field Office Directors (FODs) will take to ensure compliance with ICE priorities; follow-up procedures to ensure that measures taken by the SACs/FODs result in increased compliance with ICE priorities; a corrective action plan to minimize entries coded as "no data," which represent a record that was not completed properly; performance measures with specific target levels for arrest, detention, and removal priority levels; and documented internal oversight of 287(g) supervisors.

OIG Analysis: This recommendation is **resolved** and **open** pending our receipt of standard operating procedures to ensure adherence to ICE priority levels, and appropriate resource allocations based on ICE's priority framework.

Recommendation #4: Establish a process to ensure effective supervision of 287(g) officers and immigration enforcement operations.

ICE Response: ICE will establish written policy defining the roles of ICE agents who supervise 287(g) officers and immigration enforcement operations; provide a copy of the ICE Office of Training and Development's final curriculum; provide an evaluation of training effectiveness following completion of the curriculum; and provide a copy of the final FY 2011 Office of State, Local and Tribal Coordination's 287(g) Communication Plan.

OIG Analysis: This recommendation will remain **resolved** and **open** pending our receipt and review of the final version of these documents, and ICE implementation.

Recommendation #6: Ensure that 287(g) supervision is provided by authorized staff with the appropriate knowledge, skills, and abilities.

ICE Response: ICE will provide a copy of the final curriculum regarding ICE training for managing 287(g) agents and officers. This curriculum is used to teach ICE personnel the technical knowledge needed to perform supervisory tasks over 287(g) officers. ICE will also

Appendix C

Status of Recommendations From Prior OIG Reports

establish a policy that mandates that all ICE agents supervising 287(g) officers must take and pass this course.

OIG Analysis: This recommendation is **resolved** and **open** pending our receipt of the final training curriculum as described, the policy mandating completion of the course by ICE agents supervising 287(g) officers, and controls established to ensure compliance with this policy.

Recommendation #7: Develop and implement 287(g) field supervision guidance that includes, at a minimum, (1) the frequency and type of contact required between 287(g) officers and ICE supervisors; (2) the preparation, review, and approval of operational plans for community-based immigration enforcement activities; and (3) performance feedback requirements for 287(g) officers.

ICE Response: This recommendation can be accomplished through management actions previously provided for Recommendations 1, 2, 4, and 6. This includes the field supervision guide, outreach, and 287(g) performance feedback.

OIG Analysis: This recommendation will remain **resolved** and **open** pending receipt of the final version of each referenced document and process.

Recommendation #8: Establish and implement a comprehensive process for conducting periodic reviews, as well as reviews on an as-needed basis, to determine whether to modify, extend, or terminate 287(g) agreements. At a minimum, this process should include an assessment of (1) current or previous concerns expressed by field office staff; (2) media attention or community concerns that contribute to negative or inappropriate conclusions about the 287(g) program; (3) lawsuits or complaints; (4) potential civil rights and civil liberties violations; and (5) ICE's ability to provide effective supervision and oversight.

ICE Response: Provide a final copy of ICE policy, *Review, Suspension, and Termination of 287(g) Memoranda of Agreement*.

OIG Analysis: This recommendation will remain **resolved** and **open** pending our receipt and review of the final policy regarding the review, suspension, and termination of 287(g) MOAs.

Recommendation #10: Establish a process to periodically crosscheck OPR, OSLC, and OCIO records to confirm 287(g) officers' eligibility and suitability to exercise authorities granted under 287(g) MOAs.

ICE Response: Provide a final copy of ICE policy, *Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority*.

OIG Analysis: This recommendation will remain **resolved** and **open** pending receipt of the referenced policy.

Recommendation #12: Establish and implement procedures on how the results of complaints, allegations, and subsequent investigations against LEA personnel conducting immigration

Appendix C

Status of Recommendations From Prior OIG Reports

enforcement activities should be maintained and used as part of the suitability and recertification processes.

ICE Response: Provide a final copy of ICE policy, *Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority*, and ICE directive, *Review, Suspension and Termination of 287(g) Memoranda of Agreement*. Also, develop a communication plan to implement established procedures.

OIG Analysis: This recommendation will remain **resolved** and **open** pending receipt of the final referenced policy, directive, and communication plan.

Recommendation #13: Establish specific operating protocols and requirements for operational variances identified in task force and jail enforcement program models.

ICE Response: Provide standard 287(g) Memorandum of Agreement. Where feasible, ICE will inform LEAs of variances in 287(g) operating protocols and encourage LEAs to adopt best practices.

OIG Analysis: ICE's response does not address the intent of this recommendation, which is to ensure that operational procedures that allow for variations in how 287(g) officers exercise their authority within a program model are consistently addressed. This recommendation will remain **unresolved** and **open**.

ICE Response Update: The Memorandum of Agreement (MOA) establishes standard uniform procedures, accounting for the operational variances between the task force and the jail enforcement program models under appendix D.

OIG Analysis Update: As described in our report, the MOA takes into consideration that task force and jail enforcement officers are authorized to perform different immigration functions, and are subject to different selection and supervision requirements. However, the MOA does not take into consideration the wide variations that exist within task force and jail enforcement models as part of daily field operations. This recommendation will remain **unresolved** and **open** until operating protocols to address variances within task force and jail enforcement program models are established and applied consistently.

Recommendation #18: Establish collection and reporting standards that provide objective data to increase monitoring of methods participating jurisdictions use in carrying out 287(g) functions, and their effect on civil liberties. Collection and reporting requirements should include (1) the circumstances and basis for task force officer contacts with the public, (2) the race and ethnicity of those contacted, and (3) the prosecutorial and judicial disposition of 287(g) arrests.

ICE Response: ICE did not include this recommendation in its response.

OIG Analysis: ICE's initial response included its conduct of an assessment of this recommendation to ensure that ICE's 287(g) partners protect the civil liberties of every

Appendix C

Status of Recommendations From Prior OIG Reports

individual they encounter. This recommendation remains **unresolved** and **open** pending our receipt of the assessment described by ICE.

Recommendation #21: Enhance the current 287(g) training program to provide comprehensive coverage of immigration systems and processing. At a minimum, this should include hands-on experience during the 287(g) basic training course, on-the-job training, and periodic refresher training.

ICE Response: Provide a final copy of the Curriculum Design Plan Report, *ICE Training for Managing 287(g) Agents and Officers*.

OIG Analysis: This recommendation remains **resolved** and **open** pending our receipt of the referenced report, and implementation of the training curriculum.

Recommendation #22: Ensure that an appropriate level of coverage on immigration benefits, asylum, and victim and witness protections is included as part of the 287(g) basic training agenda.

ICE Response: Provide a final copy of the Curriculum Design Plan Report, *ICE Training for Managing 287(g) Agents and Officers*. Because the 287(g) basic training agenda is identical to the training offered to ICE personnel, ICE does not agree that changing the level of coverage is justified. The core objectives of the ICE 287(g) basic training program are based directly from the basic training programs for both Enforcement Removal Operations and Homeland Security Investigations staff. Also, ICE believes all training is consistent across ICE programs.

OIG Analysis: As shown in our report, there was limited information in the 287(g) basic training program on significant immigration benefits, such as the *Nicaraguan Adjustment and Central American Relief Act* and the *American Baptist Churches v. Thornburg* Stipulated Settlement Agreement. Also, as part of the four examinations administered during the 287(g) basic training course, only three questions relate to victim and witness protections and asylum. No examination questions address the asylum process or immigration benefits. An appropriate level of knowledge in these areas could minimize processing errors and reduce the risk of wrongful detention and deportation. ICE's response does not indicate any changes to coverage of immigration benefits, asylum, and victim and witness protections. This recommendation remains **unresolved** and **open**.

Recommendation #23: Establish and issue guidance to field office staff for 287(g) officer annual recertification training that emphasizes completion of online refresher training courses.

ICE Response: Provide a final copy of the Annual Verification of Designated Immigration Officers' Recertification of Delegated 287(g) Authority.

OIG Analysis: This recommendation remains **resolved** and **open** pending receipt of the final referenced document from ICE.

Appendix C

Status of Recommendations From Prior OIG Reports

Recommendation #24: Designate field office responsibilities for monitoring and enforcing compliance with training guidance, to include, at a minimum, issuing and enforcing revocation notices for 287(g) officers who do not complete required training.

ICE Response: Provide final copies of Suspension or Revocation of a Designated Immigration Officer's 287(g) Authority and Annual Verification of Designated Immigration Officers' Recertification of Delegated 287(g) Authority.

OIG Analysis: This recommendation remains **resolved** and **open** pending receipt of the final referenced documents.

Recommendation #25: Develop and implement clear guidelines for using interpreter support to assist with immigration duties and responsibilities.

ICE Response: Where feasible, ICE will illustrate circumstances under which 287(g) officers should actually use interpreter support. The attached Memorandum of Agreement with the Lexington County Sheriff's Department and appendix D provide guidelines for using interpreter support.

OIG Analysis: The referenced Memorandum of Agreement and appendix D were not included with ICE's response. This recommendation remains **unresolved** and **open** pending our receipt of guidelines on the circumstances in which interpreter support should be used to assist with immigration duties and responsibilities.

ICE Response Update: Guidelines for providing interpreter support are set forth and agreed upon in the 287(g) Memorandum of Agreement, Section XV.

OIG Analysis Update: The referenced Memorandum of Agreement requires that participating law enforcement agency personnel provide an opportunity for subjects with limited English language proficiency to request an interpreter. During our review, we identified wide variances in the use of interpreters across program sites and among 287(g) officers. However, ICE has not provided specific guidance on the circumstances in which 287(g) officers should proactively seek interpreter services. This recommendation remains **unresolved** and **open** pending our receipt of guidelines on the circumstances in which interpreter support should be used to assist with immigration duties and responsibilities.

Recommendation #30: Develop training and provide basic program information for LEA managers who maintain an oversight role for 287(g) officers in order to increase their understanding of the program and encourage their support of 287(g) activities.

ICE Response: Provide a final copy of *Curriculum Design Plan Report, ICE Training for Managing 287(g) Agents and Officers*, Office of Training and Development.

OIG Analysis: This recommendation will remain **resolved** and **open** pending our receipt of the referenced document.

Appendix C

Status of Recommendations From Prior OIG Reports

Recommendation #32: Develop a process for performing regular checks to ensure that aliens identified through the 287(g) program are not held in unauthorized facilities while in ICE custody.

ICE Response: ICE maintains an updated list of authorized detention facilities. To be on the list, the facility must be in compliance with the annual inspection process. Beginning in FY 2009, ICE's appropriation requires any facility receiving two consecutive less-than-acceptable ratings to be removed from the authorized list. In addition, detainees must be immediately removed since appropriated funds may not be used to pay for detainees' housing at these facilities. As a failsafe mechanism, the facilities are removed from the financial management system so that obligations cannot be recorded, and bills cannot be paid. Enforcement Removal Operations has a draft policy that ICE is following while it is in the clearance process.

OIG Analysis: This recommendation remains **resolved** and **open** pending our receipt of the final policy.

ICE Response Update: ICE provided a final Enforcement Removal Operations policy that pertains to closing this recommendation.

OIG Analysis Update: Enforcement and Removal Operations Policy 11152.01, Field Oversight of 287(g) Program, specifies the responsibilities of field office personnel under the 287(g) program. Specifically, it directs field office personnel to develop a process for performing regular checks to ensure that aliens identified through the 287(g) program are not held in unauthorized facilities while in ICE custody. This direction is identical to our initial recommendation. This recommendation remains **resolved** and **open** pending our receipt of the process developed for performing checks to ensure that aliens identified through the 287(g) program are not held in unauthorized facilities while in ICE custody.

Appendix C

Status of Recommendations From Prior OIG Reports

Status of Recommendations from Prior OIG Report OIG-10-124, *The Performance of 287(g) Agreements Report Update, dated September 2010*

Summary:

16 Total Recommendations

12 Closed

1 Resolved and open

3 Unresolved and open

Recommendation #1: Take timely and appropriate actions to implement OIG recommendations intended to strengthen management controls and improve oversight of 287(g) operations.

ICE Response: ICE's response to OIG-10-63 addressed this recommendation.

OIG Analysis: This recommendation remains **unresolved and open** as ICE continues its efforts to resolve the five remaining unresolved recommendations from our previous report.

Recommendation #12: Establish and implement a comprehensive process for determining whether 287(g) program goals are being achieved. This should include analyses of encounters, arrests, and removal statistics for each priority level.

ICE Response: Coordinate with 287(g) participants to identify and communicate program goals, and develop a review process to evaluate how metrics for encounters, arrests, and removal statistics relate to 287(g) program goals for each priority level.

OIG Analysis: ICE's response includes an evaluation of how encounters, arrests, and removal statistics relate to 287(g) goals for each priority level. However, it does not address the actual use of these metrics in determining whether 287(g) goals are being achieved. This recommendation will remain **unresolved and open** pending ICE's establishment and implementation of a comprehensive process for determining whether 287(g) program goals are being achieved.

Recommendation #13: Establish a follow-up process for SACs and FODs to ensure that actions taken by LEAs to improve their compliance with ICE priority levels are actually working to achieve overall program goals of identifying and removing criminal aliens.

ICE Response: Establish steps for follow-up processes for FODs and SACs, and develop performance metrics and indicators to evaluate the effectiveness of follow-up processes.

OIG Analysis: ICE's response does not include a process to determine the effectiveness of actions taken by LEAs to improve their compliance with ICE priority levels. This recommendation remains **unresolved and open**.

Appendix C

Status of Recommendations From Prior OIG Reports

Recommendation #16: Ensure that 287(g) officers are knowledgeable of all complaint procedure requirements for notifying appropriate ICE officials of complaints or allegations involving the violation of the terms of the MOA, or of any sort that may result in employee discipline or an employee becoming the subject of a criminal investigation or civil lawsuit.

ICE Response: ICE will identify and review policy and procedure requirements for notifying appropriate ICE officials of complaints or allegations involving the violation of the terms of the MOA. In addition, ICE will establish training and communication plans to ensure all 287(g) officers are aware and knowledgeable of requirements.

OIG Analysis: This recommendation is **resolved** and **open** pending our receipt of (1) a revised curriculum with sufficient information to ensure that 287(g) officers are aware of their responsibility to notify ICE officials of any type of complaint or allegation, and (2) revised policy and procedure requirements for notifying appropriate ICE officials of complaints or allegations involving violations of the 287(g) MOA.

ICE Response Update May 6, 2011: 287(g) students are provided with a “MOA Review” student handbook which states, “If any participating LEA personnel are subject of a complaint of any sort that may result in that individual receiving employer discipline or becoming the subject of a criminal investigation or civil lawsuit the LEA shall, to the extent allowed by State law, immediately notify ICE of the existence and nature of the complaint. The resolution of the complaint shall also be promptly reported to ICE.” This issue is covered in the MOA Review block of instruction and also during the “Officer Integrity/Complaint Procedures” block of instruction. The lesson plans were also provided to OIG.

OIG Analysis: This recommendation remains **resolved** and **open** pending receipt of “Officer Integrity/Complain Procedures” training materials, and a training/communications plan to ensure that 287(g) officers are aware and knowledgeable of requirements.

Appendix D
Major Contributors to this Report

Deborah Outten-Mills, Chief Inspector
Dagmar Firth, Senior Inspector
Tatyana Martell, Inspector

Appendix E
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