



AUDIT OF THE U.S. DEPARTMENT OF JUSTICE'S OVERSIGHT OF NON-FEDERAL DETENTION FACILITY INSPECTIONS

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EXECUTIVE SUMMARY

The Department of Justice (DOJ) is responsible for providing secure detention space for criminal defendants who have been arrested or detained pending the disposition of their cases. DOJ utilizes private facilities and intergovernmental agreements (IGA) with state and local detention facilities to aid in housing the growing number of federal detainees, which DOJ projects to be approximately 65,000 detainees, on average, per day in fiscal year (FY) 2013. To help ensure that these non-federal detention facilities are safe, secure, and humane, DOJ components conduct inspections of the facilities' compliance with established detention standards and conditions of confinement. During FY 2012, the Office of the Federal Detention Trustee (OFDT) and the United States Marshals Service (USMS) had primary responsibility for these inspections with oversight by the Office of the Deputy Attorney General (ODAG). According to DOJ officials, on October 1, 2012, the OFDT was merged into the USMS.

The OIG performed this audit to determine if DOJ's oversight efforts ensure a safe, secure, and humane environment for federal detainees housed in non-federal detention facilities. We focused our efforts on non-federal detention facility inspections conducted between FY 2006 and FY 2010. The audit found that while DOJ employed basic standards to evaluate the conditions of non-federal detention facilities, based upon the standards established by the American Correctional Association, the OFDT and the USMS applied the basic standards differently depending upon the type of inspection being conducted. A review by the OFDT typically took 3 days, while a review by the USMS typically took only 2 hours.

The audit also found that the OFDT and USMS used separate processes to determine which of the approximately 1,100 non-federal detention facilities to review during a given fiscal year. Neither process incorporated a risk-based assessment to ensure that facilities most in need of review were prioritized. For example, when deciding which facilities to review, the OFDT did not consider whether a facility had recently been inspected and received favorable reviews. Of the OFDT's inspection of 34 unique facilities during our review period, 17 had received a rating of either good or acceptable during at least 2 consecutive years. Despite the favorable ratings, the OFDT selected and reviewed 13 of these 17 facilities for a third consecutive year. The USMS, by contrast, intended to annually review all of its IGA facilities. However, it did not have a sufficient system to ensure that the annual

reviews actually occurred.¹ We identified 63 instances between FY 2006 and FY 2010 where the USMS failed to perform an annual inspection of a facility with an average daily population of at least 200 detainees. Further, an in-depth look at these 63 instances revealed that 13 unique facilities had not been inspected during at least 2 consecutive years of our review period, including 2 facilities that were not inspected at all between FY 2006 and FY 2010.²

Moreover, the OFDT and USMS did not adequately coordinate their selection processes for inspections, resulting in the inefficient use of resources. The OFDT conducted 142 inspections of non-federal detention facilities between FY 2006 and FY 2010. In 70 of those 142 instances, the USMS reviewed the same facility during the same fiscal year.³ According to the USMS, local governments expressed frustration with multiple inspections by different entities because of the disruption to the facilities' operations. In addition, it is inefficient for both the OFDT and USMS to expend resources to conduct separate and uncoordinated inspections of the same facility during the same year. The OFDT spent approximately \$3.5 million to conduct inspections of the 70 facilities that the USMS also reviewed. Further, of the 70 duplicate inspections, we determined that in 51 instances the OFDT and USMS reports contained inconsistent evaluation results.

We also noted a lack of coordination on the resolution of deficiencies identified during inspections. OFDT officials explained that the USMS oftentimes does not ensure its state and local IGA facilities take corrective action on deficiencies identified during the OFDT's inspections. USMS officials explained that in some locations available detention space is scarce, that the USMS cannot tell state and local governments how to operate their facilities, and in some instances the USMS must meet the demands of the federal judiciary regarding the location of detainees. Nonetheless, we believe that failing to ensure that facilities take corrective action on identified weaknesses wastes taxpayer dollars and could jeopardize the safety and security of federal detainees.

¹ The data in the USMS's system for tracking its inspection activities was not complete. This was due, in part, to a USMS policy in effect during part of our review period that allowed the USMS to accept state level inspections in lieu of USMS-conducted inspections. However, the USMS did not fully document the extent of this activity.

² Although the USMS did not inspect two facilities at all during our review period, we found that the OFDT conducted inspections of the two facilities during each fiscal year from FY 2008 through FY 2010.

³ If the USMS met its goal of reviewing every facility every year, then duplication would have regularly occurred if the OFDT also conducted reviews. However, we found that the USMS did not meet its goal during the years we reviewed.

In FY 2012, DOJ proposed to move the OFDT into the USMS. This organizational change has taken place and will result in changes to the non-federal detention facility inspection practices throughout DOJ. We believe that the findings detailed in our report should be considered as DOJ moves forward in its decision-making processes regarding the management of activities related to federal detainees. Our audit resulted in seven recommendations to improve DOJ's oversight of non-federal detention facilities.

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INTRODUCTION

The Department of Justice (DOJ) is responsible for providing secure detention space for criminal defendants who have been arrested or detained pending the adjudication of their cases. In its fiscal year (FY) 2013 budget request, DOJ stated that its law enforcement initiatives have improved the nation's security and made communities safer, resulting in an increased need for additional prison and detention capacity.⁴ DOJ utilizes private facilities and intergovernmental agreements (IGA) with state and local detention facilities for the housing and safekeeping of federal detainees and prisoners.⁵ During FY 2010, DOJ spent over \$1.24 billion to house, on average, 59,138 federal detainees in approximately 1,100 non-federal detention facilities.⁶ DOJ projected that the average daily detention population would be nearly 65,000 detainees in non-federal detention facilities for FY 2013. To help ensure that non-federal detention facilities are safe, secure, and humane, two DOJ components, the Office of the Federal Detention Trustee (OFDT) and the United States Marshals Service (USMS), had primary responsibility for conducting inspections of the facilities' compliance with established detention standards and conditions of confinement.⁷ According to DOJ officials, on October 1, 2012, the OFDT was merged into the USMS.

The purpose of this audit was to determine if DOJ's oversight efforts ensure a safe, secure, and humane environment for federal detainees housed in non-federal detention facilities. We reviewed the applicable

⁴ U.S. Department of Justice, "FY 2013 Budget & Performance Summary," <http://www.justice.gov/jmd/2013summary> (accessed June 22, 2012).

⁵ IGAs are formal agreements between a DOJ component and a state or local government in which the state or local government agrees to house federal detainees and prisoners at an agreed-upon daily rate. A detainee is a criminal defendant held in custody awaiting adjudication. A prisoner has been found guilty and sentenced to incarceration. Of DOJ's average daily detention population of 59,138 detainees in FY 2010, 20 percent were housed in private facilities or state and local IGA facilities managed by the OFDT, and 62 percent were housed in IGA facilities for which the USMS was responsible for the agreement. The remaining 18 percent were housed in facilities for which the Federal Bureau of Prisons (BOP) or the Department of Homeland Security, Immigration and Customs Enforcement were responsible for the agreement.

⁶ FY 2010 is the last year for which complete and reliable data is available.

⁷ The BOP's primary mission is to house incarcerated federal prisoners, and therefore, the BOP does not play an active role in inspecting the non-federal detention environments of federal detainees. As a result, this report contains BOP-specific information only where it is relevant to our review of non-federal detention facility inspections. The primary subjects of our report are the OFDT and USMS.

detention standards for the non-federal detention facilities, as well as the USMS's and OFDT's processes for conducting inspections of those facilities. We also obtained listings of the inspections conducted by the USMS and OFDT during FY 2006 through FY 2010, and reviewed a sample of the inspection reports. In addition, we observed a sample of the actual inspections conducted by the USMS and OFDT of non-federal detention facilities.

Organizational Structure of DOJ Components

During the period under review, the USMS, OFDT, and BOP were primarily responsible for the Department's detention efforts. The USMS was responsible for holding federal criminal detainees while courts adjudicate their cases, and the OFDT assisted in the management of detainees housed in non-federal facilities. The BOP played a supporting role by housing some federal detainees in detention units in BOP correctional facilities. The Office of the Deputy Attorney General (ODAG) was responsible for overseeing DOJ's detention efforts. The USMS, OFDT, and BOP conducted independent inspections to ensure the safety and security of the non-federal detention facilities DOJ used.

USMS

In FY 2003, the USMS re-established its Conditions of Confinement Program, which is managed by its Prisoner Operations Division. The overall mission of this program is to monitor non-federal detention facilities that house USMS detainees and ensure that the facilities are safe, secure, and humane and protect the detainees' statutory and constitutional rights. The USMS requires each of its 94 districts to conduct annual inspections of actively used state and local detention facilities within its jurisdiction.⁸ These inspections are to be completed by the end of each fiscal year. The U.S. Marshal generally assigns one Deputy U.S. Marshal to conduct the inspection of a facility, and each on-site inspection usually lasts approximately 2 hours. The USMS's inspections are conducted based upon the standards identified in the Conditions of Confinement Program. The Prisoner Operations Division provides training to the Deputy U.S. Marshals on how to conduct the inspections and performing these inspections is a collateral duty for the Deputy U.S. Marshals. Because the inspections are a collateral duty, there are no specific costs factored into the USMS Prisoner Operations Division's budget for conducting the inspections.

⁸ The number of state and local facilities used by the USMS varies among districts because within each district, the U.S. Marshal is responsible for determining the specific locations where federal detainees will be confined.

OFDT

Established by the Attorney General in September 2001, the OFDT was created pursuant to a Congressional directive to “exercise all power and functions authorized by law related to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody of the United States Marshals Service.”⁹ Specifically, the OFDT was established to manage and plan for detention resources without unnecessary duplication of effort.¹⁰ The OFDT’s mission was to develop DOJ detention policy, manage federal detention resources to maximize available detention space, and provide oversight of detention management and coordinate detention activities with federal agencies involved in detention to provide for the safe, secure, and humane confinement of federal detainees.

Although the USMS is the primary DOJ entity responsible for arranging for DOJ detainee housing, the OFDT negotiated a small number of agreements with private, state, and local facilities for the housing of DOJ detainees throughout our review period. In FY 2011, the OFDT was responsible for the agreements with 4 state or local facilities and for the contract of 14 private detention facilities. According to the OFDT, it managed detention contracts with private jail facilities and, when special circumstances existed, negotiated IGAs with state and local facilities. Such special circumstances could be an instance where a critical need for bed space exists in a geographic area or when the OFDT was believed to be in the best position to negotiate an agreement and achieve economies of scale. The OFDT was responsible for managing the agreements it awarded.

In FY 2006, the OFDT established its Quality Assurance Review (QAR) Program to ensure the adequacy and sufficiency of the services provided by these non-federal detention facilities. Through its QAR Program, the OFDT conducted an annual review of all private, state, and local facilities under agreement with the OFDT, as well as a selection of state and local facilities under agreement with the USMS. OFDT officials explained that the Federal Acquisition Regulation requires annual contract monitoring to ensure compliance with the contract’s terms and conditions. These officials stated that the OFDT conducted annual QARs of the private facilities to fulfill this

⁹ Pub. L. 106-553, App. B, 114 Stat. 2762A-52 (2000).

¹⁰ At the time of the OFDT’s establishment, the Immigration and Naturalization Service (INS) was a component of DOJ, and it was responsible for alien detainees. Therefore, two DOJ components (both the USMS and INS) had federal detainees who were being housed in non-federal detention facilities. In FY 2003, INS was transferred to the Department of Homeland Security (DHS). Alien detainees are now the responsibility of DHS’s Immigration and Customs Enforcement.

requirement. The OFDT contracted with private companies that provided subject-matter experts to conduct the on-site reviews and budgeted approximately \$50,000 for each review. A QAR team of one senior project manager and four subject-matter experts generally conducted each inspection, which lasted approximately 3 days.

BOP

The BOP plays a small role in the inspection of non-federal detention facilities. The BOP holds IGAs with state, local, and private facilities for the incarceration of federal prisoners already convicted and sentenced. In FY 2011, the BOP actively used about 166 state and local facilities to house federal prisoners.¹¹

BOP Community Corrections Managers and Contract Specialists perform annual inspections of all state and local facilities with which the BOP has agreements to house federal prisoners. If the BOP piggybacks on a state and local facility for which the USMS is responsible for the agreement, the BOP will inspect that facility once every 3 years. For the 2 intervening years, the BOP requests a copy of the USMS's inspection of the state and local facility. Personnel within BOP's Community Corrections Office are dedicated to conducting the inspections of state and local facilities used by the BOP. A BOP official stated that there are no specific identified costs associated with conducting these inspections because the inspections are a part of the staff's normal responsibilities, and the costs are not broken out in the budget.

OIG Audit Approach

The OIG performed this audit to determine if DOJ's oversight efforts ensure a safe, secure, and humane environment for federal detainees located in non-federal detention facilities.

To accomplish this objective, we interviewed 28 officials from the USMS, OFDT, BOP, ODAG, and the Department of Homeland Security (DHS), Immigration and Custom Enforcement (ICE) to obtain information regarding each component's involvement in the use and oversight of non-federal detention facilities. We also reviewed the detention standards that DOJ components use to assess the approximately 1,100 actively used non-federal detention facilities, as well as each component's inspection process that incorporates those standards. We examined the OFDT's inspection reports for the reviews it conducted of non-federal detention facilities during FY 2006

¹¹ The USMS does not perform inspections of facilities for which the BOP is responsible for the agreement.

through FY 2010, as well as a sample of the USMS inspection reports for the same time period. Further, we analyzed the USMS average daily prisoner population data and researched pertinent litigation against DOJ regarding non-federal detention facilities. In addition, we observed two inspections conducted by the OFDT and two inspections conducted by the USMS.¹²

¹² We observed the inspection of the Maryland Correctional Adjustment Center in Baltimore, Maryland, for which the OFDT entered into an IGA, as well as the inspection of the Robert A. Deyton Facility in Lovejoy, Georgia, which is an OFDT-contracted private detention facility. The two USMS IGA facility inspections we observed were at the McHenry County Jail in Woodstock, Illinois, and the Porter County Jail in Valparaiso, Indiana.

FINDING AND RECOMMENDATIONS

Lack of Coordinated DOJ Approach

We found that DOJ's process for ensuring its federal detainees are housed in safe, secure, and humane non-federal detention facilities could be improved. The different DOJ components involved in reviewing the conditions of non-federal detention facilities had their own process for conducting these inspections without sufficient coordination with the other components' efforts. As a result, the non-federal detention facility inspections varied in thoroughness depending upon which component performed the review. Moreover, we found that more than one DOJ component was evaluating the same non-federal detention facility during a given fiscal year, and that some of these facilities received inconsistent findings. We believe that DOJ needs to provide more oversight on the inspections of non-federal detention facilities to: (1) ensure federal detainees are housed in safe, secure, and humane environments; and (2) ensure components are using limited resources in the most efficient manner possible.

Detention Standards

In 2000, DOJ created a working group comprised of the USMS, INS, and BOP to develop a common set of standards for evaluating the conditions of non-federal detention facilities. The goal of the working group was to identify common functional areas that all three agencies shared and to develop standards that would help ensure non-federal detention facilities housing federal detainees were safe, secure, and provided basic services in a humane fashion. On November 14, 2000, DOJ adopted a set of standards for all detention facilities not operated by, but rather were under contract or agreement with the USMS, INS, and BOP, and these standards are referred to as the *Core Detention Standards*. The Core Detention Standards include 59 individual elements encompassing 9 common functional areas, and the standards are similar in nature to the criteria established by the American Correctional Association.¹³

¹³ The American Correctional Association is a professional organization that supports the cause of corrections and correctional effectiveness. According to the American Correctional Association, its standards are considered the national benchmark for the effective operation of correctional systems throughout the United States and ensure that correctional facilities are operated professionally.

In 2002, following its creation, the OFDT established another working group to develop a revised set of standards because, as explained by a senior OFDT official, the Core Detention Standards did not provide reviewers with a consistent approach for evaluating facilities. The group, led this time by the OFDT, was again comprised of individuals from the USMS, INS, and BOP. The working group reviewed the existing standards and identified requirements that were consistent among the components. By 2004, the working group developed the *Federal Performance-Based Detention Standards* that include 58 elements grouped into the same 9 functional areas as the Core Detention Standards and a detailed checklist of over 1,000 total line items for these 58 elements.¹⁴

The OFDT revised the Federal Performance-Based Detention Standards as necessary to coincide with changes in industry standards and the enactment of new laws. For example, the standards were updated to include requirements related to the Prison Rape Elimination Act.¹⁵ The OFDT's inspections of detention facilities were conducted using the Federal Performance-Based Detention Standards.

However, the USMS had not adopted the Federal Performance-Based Detention Standards for its detention facility inspections. Instead, the USMS continued to use the Core Detention Standards that were developed in 2000. According to a senior USMS official, the documents used by the OFDT and USMS have similar foundations, but that the existence of two standards documents can be confusing and unclear. This official further stated someone could mistake the two documents as being two different sets of standards.

In addition, a USMS official responsible for facility inspections stated that DOJ components referred to the American Correctional Association standards during the development of the Core Detention Standards. However, this official stated that the USMS had not revised the Core Detention Standards to reflect any subsequent changes to the American Correctional Association standards.

¹⁴ The Core Detention Standards address juvenile detainee needs in the Services and Program functional area, while the Federal Performance-Based Detention Standards do not contain criteria for juvenile detainees under this functional area. This accounts for why the Core Detention Standards have one more element than the Federal Performance-Based Detention Standards.

¹⁵ Congress enacted the Prison Rape Elimination Act in September 2003. 42 U.S.C. § 147 (2003). The purpose of this act includes, among other items: (1) making the prevention of prison rape a top priority in each prison system; and (2) developing and implementing national standards for the detection, prevention, reduction, and punishment of prison rape.

According to executives at the USMS and the OFDT, the different standards documents have the same foundation and are based upon the same nine functional areas, which the USMS Director and the Federal Detention Trustee commonly referred to as "the detention standards." However, each component applied the basic standards differently to coincide with the type of inspections being performed. As described below, the inspections that were performed using the documents varied in thoroughness.

The Federal Performance-Based Detention Standards, which include over 1,000 line items for review at a facility, provide for an extensive and comprehensive assessment for each of the nine functional areas. According to officials at both the OFDT and the USMS, this thorough review was designed for the inspection of contract facilities and was to be performed to evaluate contract compliance. The OFDT also conducted the same type of thorough review of certain USMS IGA facilities. The OFDT's reviews on average took 3 days to complete.

The USMS's inspections, which were based on the Core Detention Standards document, were not as thorough as those conducted by the OFDT. This difference was also acknowledged by a senior USMS official who said the USMS conducts " cursory" reviews that did not generally require USMS personnel to test a facility's procedures and protocols. Using the Core Detention Standards document, the USMS developed a form (USM-218) to guide the jail inspectors and to document the reviews of detention facilities. The USMS's inspections on average took 2 hours to complete.

The BOP, which also inspects detention facilities, utilized its Community Corrections Manual for inspections of state, local, and private facilities. Within the manual, which became effective on January 12, 1998, there were different contract monitoring instruments that were designed to assist the BOP in conducting program evaluations based on contract requirements. One of the monitoring instruments was the *Contract Jail Services Monitoring Instrument*, which was to be used for facilities where the BOP was listed as an authorized user of another federal agency's agreement for bed space. The Contract Jail Services Monitoring Instrument contained two sections that were equivalent to the nine functional areas included in the Core Detention Standards and the Federal Performance-Based Detention Standards documents. The BOP's inspections on average took 1 to 3 days to complete.

USMS, OFDT, and BOP officials said that the components applied the basic detention standards differently because the components have different functions within the detention environment. As noted above, the OFDT

designed the Quality Assurance Reviews based upon the Federal Performance-Based Detention Standards for the purpose of monitoring contract compliance of private detention facilities. The USMS's application of the Core Detention Standards and use of the USM-218 form in reviewing state and local jails with which the USMS has an agreement for the use of jail bed space were designed to provide the USMS assurance that the facilities meet the basic standards. The USMS further explained that these facilities are often regulated by state-level requirements and oversight.

The USMS and OFDT also had contrasting philosophies on legal liability and the different application of facility standards. Officials from the USMS Prisoner Operations Division explained that the USMS's inspection program supports the USMS's position that limiting the scope of inspections minimizes the agency's legal liability. The USMS Office of General Counsel (OGC) explained that the USMS is not liable for negligent acts committed by a state or local IGA facility or for any claim of negligence in connection with the USMS's selection or inspection of an IGA facility. The USMS OGC also indicated that higher standards for utilizing local jail facilities must be weighed against the willingness of local jail facilities to undergo such inspections and to contract with the USMS. According to the USMS OGC, the USMS only requires that certain basic standards be met.

The USMS OGC further explained that the USMS conducts its inspections for the purpose of providing each district's United States Marshal with the information and tools to assess where to house USMS detainees within each district. The USMS OGC stated that the USMS's inspections are not intended to be an accreditation of the facilities or a determination that the jail is compliant with all standards. Rather, the USMS OGC explained that the inspection is but one tool in the USMS's determination of whether to utilize the facility, and that the USMS is not a standards-enforcement authority.

In contrast, a senior OFDT official stated he believed that conducting a more in-depth review using the Federal Performance-Based Detention Standards limited DOJ's legal liability. In this official's opinion, conducting a more thorough inspection afforded DOJ the opportunity to take corrective action on any identified unsafe, insecure, or inhumane conditions that otherwise would go unnoticed. Moreover, if conditions changed and a facility fell out of compliance with the Federal Performance-Based Detention Standards, DOJ could rely upon the thoroughness of its review to support that the condition causing the incident was not present at the time of the inspection.

Selection Criteria for Conducting Inspections

Each component established a process for determining which non-federal detention facilities it would review during a given fiscal year. However, we found that there had been some disagreement over the types of facilities that would be reviewed by the OFDT. In addition, both the OFDT and USMS did not meet their goals for the number of reviews to be conducted. Moreover, we believe that DOJ could enhance the selection processes by implementing a more risk-based and coordinated approach that would also result in the more efficient use of resources.

OFDT Selection Methodology

The OFDT conducted annual inspections of a sample of non-federal detention facilities. The facilities selected for review could be divided into two groups: (1) non-federal detention facilities for which the OFDT was responsible for the agreements, and (2) non-federal detention facilities for which the USMS was responsible for the agreements.

Regarding the first group of facilities, the OFDT's goal was to annually review all private detention facilities under contract with the OFDT and all state and local facilities for which the OFDT established the agreement. The OFDT's contracts with the private detention facilities required such an annual inspection to be conducted, which OFDT officials explained was to ensure compliance with the Federal Acquisition Regulation. The OFDT's agreements with state and local governments also had the same requirement.

The other group of non-federal detention facilities that the OFDT inspected was facilities for which the USMS executed an IGA with a state or local government. The OFDT selected these facilities to review based upon the number of detainees housed in the facility. The OFDT categorized the USMS's facilities into large, medium, and small facilities through use of the prior fiscal year's average daily detainee population data.¹⁶

According to a June 2009 OFDT operating procedure, the OFDT reviewed USMS data to identify all large USMS IGA facilities that were then added to the OFDT's schedule of annual reviews. The policy also stated that the Assistant Trustee who was responsible for overseeing the QAR Program could include on the schedule other USMS IGA facilities that house an average daily population of 400 or more detainees. The Federal Detention

¹⁶ A facility housing an average of 480 or more detainees per day was categorized as a large facility, while one that houses between 200 and 479 detainees per day was considered a medium facility. Any facility housing fewer than 200 detainees per day, on average, was classified as a small facility.

Trustee confirmed the selection of USMS IGA facilities for review by explaining that the OFDT reviewed large USMS facilities and others by special request or need.

According to the USMS, the OFDT was expanding its QAR Program from larger contract facilities to smaller state and local detention facilities. In a July 2010 letter to the Federal Detention Trustee, the USMS advised the OFDT that the USMS was not in agreement with this expansion to smaller facilities. According to the letter, the USMS did not take issue with the OFDT's inclusion of large state and local facilities in the OFDT's inspection program; however, the USMS letter did take issue with the OFDT's plan to expand its inspections to mid-size or smaller facilities.

The disagreement between the components continued into FY 2011. In March 2011, the USMS again sent a letter to the Federal Detention Trustee expressing its concern with the OFDT's expansion of the inspection program to smaller facilities. In this letter, the USMS stated that it would not support the application of the Federal Performance-Based Detention Standards to certain facilities, particularly smaller facilities or those having received acceptable ratings in previous years.

Although OFDT officials involved with the QAR Program did not specifically state that the QAR Program was being expanded, they advised that the OFDT attempted to review all large and medium USMS IGA facilities, as well as small USMS IGA facilities when it received a request from the USMS or if a significant event occurred at such a facility. By selecting all large and medium USMS IGA facilities, the OFDT would be conducting a review of those facilities housing, on average, at least 200 detainees per day, which was not in agreement with the OFDT's operating procedure. These individuals explained that by reviewing all large and medium USMS IGA facilities, the OFDT would maximize the impact of its reviews on the population of federal detainees.

According to the USMS and OFDT, the conflict between the two components had abated, and the relationship issues that once existed had been mended. The USMS and OFDT advised that they planned to establish a working group that would further enhance the components' coordination efforts. According to USMS officials, the working group would work to clarify issues relating to the standards documents used by the USMS and OFDT and to increase coordination related to the components' facility inspections. As of April 2012, the working group was still in the conceptual stages. However, at the formal exit conference in September 2012, a senior USMS official advised the OIG that this working group's efforts had been delayed due to the pending transition of the OFDT into the USMS.

OFDT Inspections Conducted

Using a list of all OFDT and USMS facilities used to house federal detainees between FY 2006 and FY 2010, the OIG identified the total number of actively used non-federal detention facilities by type of facility and compared that information to the actual inspections conducted by the OFDT between FY 2006 and FY 2010. Exhibit 1-1 displays the total number of active facilities by type and the actual number of inspections conducted by the OFDT.

**EXHIBIT 1-1
OFDT INSPECTIONS CONDUCTED
FY 2006 – FY 2010**

FY	OFDT Facility		Large USMS Facility		Medium USMS Facility		Small USMS Facility		Total	
	Conducted ¹⁷	Universe	Conducted	Universe	Conducted	Universe	Conducted	Universe	Conducted	Universe
2006	4	5	8	16	6	26	3	1,002	21	1,049
2007	5	9	13	14	6	27	2	1,010	26	1,060
2008	10	12	8	9	7	31	2	1,021	27	1,073
2009	16	14	5	9	10	34	3	1,038	34	1,095
2010	14	17	8	11	10	26	2	1,045	34	1,099
TOTAL	49	57	42	59	39	144	12	5,116	142	5,376

Source: OIG analysis of the OFDT's QAR Program data and the USMS's average daily population data

Although the OFDT's operating procedure did not require an annual inspection of medium and small USMS IGA facilities, the OIG determined that the OFDT had conducted inspections on 39 medium USMS IGA facilities and 12 small USMS IGA facilities throughout our review period, as shown in the preceding Exhibit 1-1. In addition, the OIG identified that the OFDT generally did not conduct annual inspections of each OFDT facility used during our review period nor did the OFDT inspect all of the large USMS IGA

¹⁷ In FY 2009, the OFDT conducted two "after-action" reviews of facilities that had already undergone a regularly scheduled inspection. After-action reviews were performed following a significant event, such as an escape. As a result of these two after-action reviews, the number of OFDT inspections conducted exceeded the number of OFDT facilities in FY 2009.

facilities that were used during FY 2006 through FY 2010. For instance, the OFDT was responsible for the contract or agreement at 17 facilities during FY 2010 and conducted an inspection on 14 of those facilities. Similarly, in FY 2009, the OFDT conducted a review on 5 of the 9 large USMS IGA facilities. OFDT officials explained that budget limitations prevented the OFDT from conducting a quality assurance review of every OFDT private and IGA facility, as well as every large USMS IGA facility.

Because the OFDT cited budget limitations as a primary factor restricting its ability to accomplish its goals, we believe that the OFDT should have taken a more strategic approach to its facility selection, thereby leveraging its resources to provide better coverage of facilities reviewed.

The OFDT generally reviewed the same facility each year without consideration of previous inspections of those facilities. For instance, three private facilities were in existence since FY 2006, and the OFDT reviewed two of those facilities every year between FY 2006 and FY 2010. Senior OFDT officials explained that the private facility contracts included a clause requiring an annual inspection of the facility. In addition, USMS facilities categorized as large facilities generally maintained similar population sizes from year to year; therefore, there was little variance in the USMS facilities selected for OFDT inspections.

Between FY 2006 and FY 2010, the OFDT conducted a total of 142 quality assurance reviews. These 142 reviews were at 47 different non-federal detention facilities. Of the 47 facilities, 34 (or 72 percent) were reviewed more than once during this time period. We analyzed the ratings of those facilities that were reviewed more than once and found that 17 of the 34 non-federal detention facilities received a rating of either good or acceptable during at least 2 consecutive years. Despite the favorable ratings, the OFDT selected and reviewed 13 of the 17 facilities for a third consecutive year.

We believe that the OFDT could have enhanced its inspection process by incorporating a more risk-based approach for selecting facilities to review, which could have also resulted in the more efficient and effective use of resources. The OFDT would have been able to better prioritize the facilities it reviewed through the use of a more strategic selection process. For instance, if a facility continually obtained an acceptable rating, it seems reasonable that the risk of deficiencies surfacing at the facility during ensuing years would have been lower, thus not warranting another review for a period of time. If reviews of acceptable facilities were conducted less often, the OFDT would have had the ability to provide more attention to facilities that did not score as highly in the inspection process. By using a

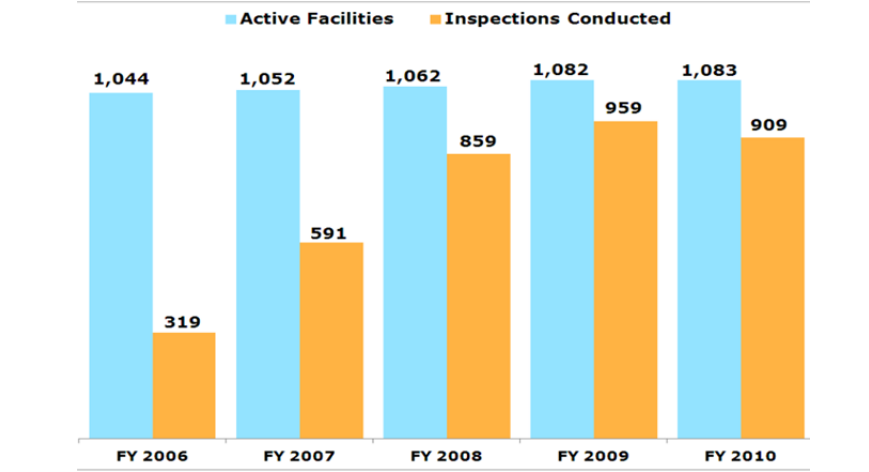
more risk-based, strategic approach, we believe the OFDT could have made more efficient use of its resources and possibly reviewed a larger number of facilities over multiple years, thus expanding the overall confidence that a greater number of facilities provided a safe, secure, and humane environment for federal detainees.

An OFDT official explained that the OFDT's methodology was designed in an effort to provide broad coverage of detainees housed in non-federal detention facilities and cover approximately 50 percent of DOJ's federal detainee population. We analyzed average daily detainee population data and computed that the OFDT's inspections during FY 2006 through FY 2010 accounted for between 21 and 34 percent of the federal detainee population. As a result, during our review period, the OFDT had not conducted inspections of non-federal detention facilities accounting for between 66 percent and 79 percent of DOJ detainees. OFDT officials indicated that there was potential for modifying the private facility contracts to allow for in-depth inspections to be suspended if the facility was rated acceptable for 2 consecutive years.

USMS Selection Methodology

According to a senior USMS official, the USMS intended to annually review all of the state and local facilities that it uses. The USMS did not achieve its goal during any fiscal year of our review period, having conducted inspections of only between 31 percent and 89 percent of its facilities.

EXHIBIT 1-2
USMS INSPECTIONS OF STATE AND LOCAL
FACILITIES
FY 2006 – FY 2010¹⁸



Source: OIG analysis of the USMS's inspection data

As shown in Exhibit 1-2, the USMS generally increased the number of inspections conducted each year. Although the USMS's rate of completion was only 31 percent in FY 2006, its completion rate generally increased since that time and in FY 2010 the USMS reviewed 909, or 84 percent, of its 1,083 actively used facilities. USMS officials stated that the IGA facility inspections are a corollary duty for Deputy U.S. Marshals and that the Prisoner Operations Division sends annual reminders to the district offices to reiterate the responsibilities for IGA facility inspections. Moreover, senior USMS officials believe that the USMS was reviewing its regularly used IGA facilities, and that those not being reviewed likely were facilities that housed very few detainees for a short period of time.

The USMS has a database that lists its actively used IGA facilities and the corresponding average daily detainee population at those facilities. The USMS also has a rudimentary database listing its inspections of IGA facilities. However, these two databases are not interrelated or interconnected, and the USMS, therefore, cannot easily identify which actively used facilities have not been inspected during a given fiscal year. Because of this database limitation, we were unable to conduct a complete analysis on all actively used USMS IGA facilities. Instead, we focused on those facilities housing, on average, at least 200 federal detainees per day. Between FY 2006 and

¹⁸ The USMS stated that the data it provided on the number of inspections conducted during FY 2006 through FY 2008 was incomplete. The USMS explained that USMS district offices were allowed to accept state inspections of state and local IGA facilities under certain circumstances through April 2008, but that these inspections were not fully captured in the USMS's inspection database.

FY 2010, we identified 63 instances where the USMS failed to inspect facilities with an average daily detainee population of 200 or more detainees. An in-depth look at these 63 instances revealed that 13 unique facilities had not been inspected during at least 2 consecutive years of our review period, including 2 facilities that were not inspected at all by the USMS between FY 2006 and FY 2010 despite having housed an average of at least 200 detainees per day during that period. We did find, however, that the OFDT had inspected those particular facilities during the appropriate fiscal year in 29 of the 63 instances, including inspections of the two previously mentioned facilities during each fiscal year from FY 2008 through FY 2010.¹⁹

The USMS's goal of 100 percent inspection did not provide any allowance for prioritizing facilities that may have been missed in previous years because the goal did not acknowledge that facilities might not be inspected during a given fiscal year. The USMS could improve its inspection program by establishing, within its overall goal of reviewing all facilities each year, requirements to prioritize the facilities not inspected in previous years and ensure facilities are reviewed at least once within a specified time period.

Similarly, we believe that the USMS should prioritize its inspections using the ratings of its previous inspections of the same facilities. Incorporating inspection results into the scheduling of inspections will help ensure that facilities found to have deficiencies are re-inspected at an appropriate interval. This will help ensure that corrective action is taken and lessen the risk of housing detainees in unsafe environments.

We recommend that non-federal detention facility inspections are scheduled using a risk-based selection process. Prioritizing inspection efforts could also allow the USMS to devote more time to the inspections it decides to conduct, thus resulting in the more effective and efficient use of its resources.

Duplicate and Inconsistent Evaluations

In addition to their separate facility inspection programs, the OFDT and USMS did not coordinate their review efforts well, and as a result, there were numerous instances in which a facility had been inspected separately by both the USMS and OFDT during the same fiscal year. We also found

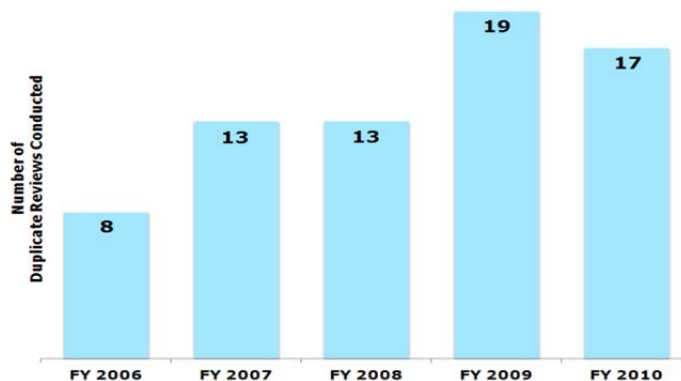
¹⁹ For the 63 instances in which the USMS did not conduct an inspection of a facility housing an average of at least 200 detainees per day, the OFDT did not conduct inspections of these facilities in 34 of the 63 instances.

that the inspection reports associated with these duplicate reviews sometimes contained inconsistent ratings for the facilities.

Duplicate Evaluations

As shown in Exhibit 1-1, the OFDT conducted 142 inspections between FY 2006 and FY 2010. Of those 142 inspections, we identified 70 instances where the USMS also conducted a review of the same facility during the same fiscal year as shown in Exhibit 1-3.²⁰

EXHIBIT 1-3
NUMBER OF FACILITIES REVIEWED BY
BOTH THE OFDT AND USMS
FY 2006 – FY 2010



Source: OIG analysis of OFDT and USMS facility inspection data

At times, the USMS conducted its inspection of a facility at the same time the OFDT was conducting its inspection. We found that the USMS and OFDT conducted 6 of the 70 duplicate inspections simultaneously. Local governments expressed displeasure with being continually inspected by numerous entities. According to a July 2010 USMS letter, local governments indicated that multiple inspections by various federal entities disrupted their detention facilities' operations. As a result, the local governments often

²⁰ We counted each instance where the USMS and OFDT inspected the same facility in the same fiscal year as one duplicate review. For example, if the USMS and OFDT both inspected Facility X during FY 2007, we counted it as one duplicate inspection. However, the same facility may have been inspected by both the USMS and OFDT in more than one fiscal year. For example, if the USMS and OFDT both inspected Facility X and Facility Y during FY 2008 and FY 2009, we counted it as 4 duplicate inspections although those 4 duplicate inspections encompassed only 2 unique facilities.

requested that the federal government combine inspections as much as possible, as well as accept each other's or a state inspection.

Besides the concerns of local governments, it does not seem prudent for two components to have spent resources to conduct separate and uncoordinated inspections of the same facility given current budget constraints. As mentioned, each OFDT inspection cost approximately \$50,000. Therefore, the OFDT spent approximately \$3.5 million to conduct inspections of the same facilities that the USMS also reviewed. The USMS's inspections are conducted as a corollary duty and therefore do not have an identified cost. However, each USMS inspection consumed about 2 hours of staff time, and we believe that there may be opportunities for at least a portion of these resources to be more effectively used to ensure other non-OFTD reviewed facilities are inspected before well-performing institutions are reviewed twice.

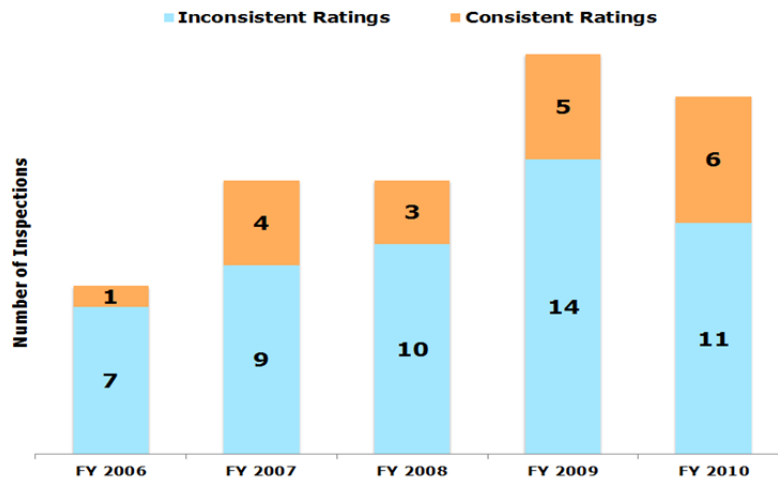
The USMS and OFDT should have better coordinated their efforts.²¹ If both components intended to inspect the same facility, then the components should have, if feasible and appropriate, planned to conduct the inspection jointly. The Department should have determined if there was a need for each component to expend limited resources to conduct inspections of the same facility whether those inspections were done simultaneously or separately. DOJ should have also been fiscally responsible and ensured that these two components used their limited resources in the most efficient and effective manner.

Inconsistent Ratings

Upon comparing the evaluations of the 70 duplicate inspections, we found 51 instances where the inspections identified different results for the same facility. For example, we identified that the OFDT conducted an inspection of a facility in June 2010 and found that the facility was deficient in several areas, including security and control, safety and sanitation, and workforce integrity. The OFDT issued its report to the USMS on August 24, 2010. The USMS then forwarded the OFDT's report to its Central District of California office for delivery to the facility. The USMS inspected this same facility on August 27, 2010, and indicated that the facility was compliant in each of the areas that the OFDT had found deficiencies. Exhibit 1-4 illustrates the inconsistent ratings between the OFDT and USMS inspections.

²¹ If the USMS met its goal of reviewing every facility every year, then duplication would have regularly occurred if the OFDT also conducted reviews. However, we found that the USMS did not meet its goal during the years we reviewed.

EXHIBIT 1-4
COMPARISON OF FACILITY RATINGS
FY 2006 – FY 2010



Source: OIG analysis of OFDT and USMS facility inspection data

The same facilities receiving different ratings during the same fiscal year raises concern. We determined that in 32 of the 70 duplicate inspections, the OFDT identified deficiencies, while the USMS indicated that the facilities were in compliance with detention standards. In contrast, we identified only four instances where the USMS's inspection reports noted deficiencies and the OFDT's reports did not. The remaining 34 instances were comprised of either: (1) both components finding a facility to be in compliance with detention standards, or (2) the components both identifying deficiencies but within different areas of the detention standards.

There may be several reasons for the different ratings, including the timing of the reviews, the standards used, and the experience level of those conducting the inspections. First, the OFDT and USMS may have assigned a different rating to the same facility due to the span of time between the components' inspections. A facility may have corrected the deficiencies identified by one reviewing entity before the review by the second entity occurred.

Another factor contributing to the inconsistent ratings is simply the coincidence that a deficiency was present during one component's inspection and not during the other's inspection. Also, because the OFDT inspections were planned well in advance and USMS inspections were performed in a more ad hoc manner, facilities were likely more prepared for an OFDT inspection than they were for one performed by the USMS.

Another possible explanation for the different ratings for the same facility may have been the standards used for inspecting the facilities and the experience level of those conducting the inspections. The Federal Performance-Based Detention Standards used by the OFDT were more detailed and comprehensive than the Core Detention Standards used by the USMS. Therefore, the inspections conducted in accordance with the Federal Performance-Based Detention Standards were more thorough and in turn, more likely to identify potential deficiencies.

The difference in the thoroughness can also be seen in the length of time it took for the OFDT and USMS to conduct the inspections. The OFDT inspection teams were generally on-site for 3 days to conduct the inspection. In contrast, the USMS inspections took about 2 hours. Finally, the experience level of the individuals conducting the inspections varied. The OFDT used four to five contracted subject-matter experts who each had a minimum of 10 years of correctional experience. The USMS inspections were usually performed by one entry-level Deputy U.S. Marshal, and the USMS provided basic training to those conducting the inspections.

Resolving Identified Deficiencies

In addition to the lack of coordination regarding the selection of facilities and performance of inspections, we also noted a lack of coordination on the resolution of deficiencies identified during inspections. The OFDT issued its report on USMS IGA facilities to USMS headquarters. OFDT and USMS officials said that the USMS was then responsible for responding to the OFDT's report and ensuring the facility took appropriate measures to correct the identified deficiencies. The OFDT requested that the USMS follow up with the applicable facilities within 30 days.

OFDT officials explained their belief that the USMS often did not follow up to ensure OFDT-identified deficiencies were addressed. These OFDT officials further stated that they reminded the USMS in instances where the USMS failed to follow up on identified deficiencies but those efforts did not result in the USMS providing the requested corrective action plans. When the OFDT determined that their efforts to provoke action by the USMS had become futile, OFDT "closed" the report. According to OFDT documentation, the OFDT closed 32 of the 36 reviews of USMS facilities conducted in FY 2009 and FY 2010 because of the USMS's non-responsiveness.²²

²² Of the 32 reports without USMS follow-up, 15 reports identified the facility as deficient or at-risk, and 17 reports identified the facility as acceptable. When facilities are rated acceptable, the report may still identify areas that could be improved.

Our review of OFDT facility inspection reports revealed numerous instances in which the OFDT inspected USMS IGA facilities multiple times and identified repeat deficiencies. The fact that subsequent inspections included repeat deficiencies indicates that the USMS had not ensured the facilities had taken corrective action on previously identified deficiencies. Further, the OFDT continued to conduct reviews at these facilities even though the USMS did not ensure the facilities had resolved previously identified deficiencies.

Failure to ensure that identified deficiencies are resolved increases the risk that a significant incident may subsequently occur. This could endanger the safety of the federal detainees housed at the non-federal detention facility found to need improvement. For example, the OFDT conducted a review of a USMS facility in FY 2010 and identified several concerns, one of which related to the sufficiency of cells used for suicidal detainees. In August 2010, the OFDT provided the USMS with its QAR report.²³ The report detailed that the rooms identified for housing suicidal detainees had not been modified to be suicide resistant and could be used to commit suicide by hanging. In addition, the report noted that in June 2009, a federal detainee had successfully committed suicide by hanging at the facility.

According to the OFDT, the USMS did not follow up with the facility regarding the FY 2010 review even after the OFDT sent the USMS a reminder in September 2010 identifying QAR reports for which the OFDT had not received a response from the USMS. The USMS acknowledged that it received the report in August 2010 and that the report noted concerns regarding the sufficiency of cells used for suicidal detainees. However, the USMS stated that the OFDT did not request the facility to create a corrective action plan to address this noted concern, and that the USMS did not take any further action to ensure the concern was corrected. In December 2011,

²³ The QAR report states that the inspection identified areas of non-compliance to the Federal Performance-Based Detention Standards, including key findings or deficiencies in five functional areas. In addition to these key findings and deficiencies, the report discussed other noted concerns, one of which was the cells identified for suicidal detainees were not sufficiently suicide resistant. Although these issues were identified during the inspection, the facility received an overall rating of acceptable. The OFDT defines an overall performance rating of acceptable as one where the program is meeting the requirements of the Federal Performance-Based Detention Standards, any lapses in internal controls are minimal, and key findings and deficiencies do not affect the performance of the facility. According to OFDT officials, if the inspection had identified a deficiency related to life safety, the QAR team would have remained on-site until the facility had corrected the identified deficiency.

a suicide by hanging occurred at that facility in a general population cell.²⁴ Following the suicide, the USMS assisted the OFDT in completing an after-action review to identify any areas of non-compliance to key functional areas of the Federal Performance-Based Detention Standards document. This after-action review identified a deficiency in the sufficiency of cells for suicidal detainees similar to the finding originally reported in the OFDT's August 2010 QAR report. In addition, in May 2012, the OFDT conducted another inspection of the facility and reported that the facility had corrected the previously identified concern related to the sufficiency of cells used for suicidal detainees.²⁵ We concluded that this incident dramatically demonstrates the need to ensure that identified deficiencies and concerns are promptly resolved.

USMS officials explained that the USMS enters into agreements, not contracts, with state and local facilities. These officials stated that as a result, the USMS cannot tell state and local governments how to operate their facilities. Because the USMS has limited authority over the state and local jail facilities, the USMS officials acknowledged that the USMS does not always ensure jail facilities adequately address the OFDT's report findings, which are founded on a more thorough evaluation instrument. However, the USMS officials explained that the USMS's IGA facility inspections ensure state and local facilities are meeting the basic requirements for ensuring federal detainees are being housed in safe, secure, and humane environments.

In a July 2010 letter to the OFDT, the USMS expressed its concern with the OFDT's expansion of the QAR Program to smaller IGA facilities. The USMS stated that such an expansion would cause a significant negative impact on the USMS's daily prisoner operations. According to USMS officials, the USMS oftentimes does not have alternate options for housing federal detainees because of limited bed space or demands placed on the USMS by the federal judiciary. USMS officials explained that the USMS can and has removed its detainees from state and local facilities found, through

²⁴ The cell modification to prevent suicides suggested by the OFDT report in August 2010 was directed at cells designated for holding detainees designated as a suicide risks and not at the general population cells. Thus, the modification suggested in the August 2010 report would not have applied to the room where the suicide occurred in December 2011. Nevertheless, we find it troubling that this recommendation was not addressed until after the OFDT completed its January 2012 after action review of the December 2011 suicide.

²⁵ The May 2012 QAR report did not identify any deficiencies or noted concerns associated with cells housing the general population or with those used to house detainees designated as a suicide risk.

inspections or regular visits to the facility to transport detainees, to pose a threat to the welfare of detainees. However, the USMS officials stated that the USMS cannot remove federal detainees every time a facility is found to be deficient based upon the more in-depth OFDT inspection, especially when the facility is in compliance with the basic detention standards or state-mandated standards.

ODAG Involvement

The weaknesses reported above have contributed not only to an inefficient use of government resources, but also to the heightened risk that federal detainees are being housed in detention facilities that are not safe, secure, and humane. The Office of the Deputy Attorney General (ODAG), which oversees DOJ's detention efforts, should provide greater oversight on the inspection of non-federal detention facilities in order to ensure that resources are not wasted and that facilities are safe, secure, and humane.

We met with an ODAG official to obtain information about the oversight provided to the components in the area of detention facility inspections and ensuring non-federal detention facilities provide a safe, secure, and humane environment for federal detainees. We learned that the ODAG official was aware that components were using different approaches for facility inspections and that the ODAG was aware of an instance in which inspectors from multiple agencies, unbeknownst to each other, separately arrived to perform a detention facility inspection at the same time.

Additionally, the ODAG official informed us that, as a result of this duplication of effort, a working group with DOJ components and ICE began meeting in December 2010 to standardize the quality assurance reviews as an interagency process with the goal that other components would accept the results of a review that was conducted by another component or perform joint inspections. As noted previously, DOJ undertook similar attempts in 2000 and 2004 to develop common baseline standards for conducting inspections of non-federal detention facilities. Despite the formation of these previous working groups, the use of varying standards and approaches has continued to exist among DOJ components.

Between January and May 2011, the new working group met to review and discuss a draft consolidated inspection worksheet. However, in May 2011 the working group disbanded because the USMS and ICE expressed reservations with the unified inspection instrument and conducting joint inspections, stating that the plans did not address their component-specific needs. Following the disbanding of the working group, OFDT officials advised that in September 2011, the Federal Detention

Trustee developed a charter for a joint review program that sets forth the goals, membership, and operating guidelines for the heads of the components involved in the area of detention operations. For example, the charter outlines six goals, including to: (1) develop and utilize a common core set of federal detention standards, (2) coordinate review schedules that reduce the duplication of reviews, and (3) develop and utilize a unified database of findings and corrective actions. As of April 2012, only the OFDT had signed the charter. As previously reported in the Selection Criteria for Conducting Inspections section of this report, another working group (separate and distinct from the one for which only the OFDT has signed the charter) was in the conceptual stages, and OFDT and USMS executives stated that this working group would address various issues related to the functions of the OFDT and USMS. However, at the formal exit conference in September 2012, a senior USMS official stated that this working group's efforts had been placed on hold because the OFDT will be merged into the USMS in FY 2013.

The Future

In FY 2012, DOJ officials formally requested a reorganization whereby OFDT's functions would be transferred to the USMS. DOJ officials estimated that this transition would result in efficiencies in human and physical capital and save DOJ \$5.6 million. According to DOJ officials, on October 1, 2012, the OFDT was merged into the USMS.

The merger will impact the future of detention facility inspections in DOJ because there no longer will be two primary components inspecting non-federal detention facilities. Instead, these activities will all be performed under the auspices of the USMS. The USMS should establish overall guidance for its inspections of non-federal detention facilities. The guidance should establish general expectations for a baseline number of facilities to be reviewed each year, how often individual facilities should be inspected, the general depth of the review to be conducted, and the required follow-up on inspection results. We believe that the guidance could be flexible to allow the USMS to conduct inspections of varying degrees of thoroughness dependent upon factors, such as facility type, inspection history, and level of facility use. Once this guidance is developed, ODAG officials should ensure that all detention facility inspection policies and procedures are congruent throughout DOJ and are consistent with DOJ's expectations.

Recommendations

We recommend that the USMS:

1. Establish and promulgate guidance on the standards to use when conducting inspections of non-federal detention facilities and the depth to which these inspections will be conducted.
2. Establish and promulgate guidance for a risk-based selection process that includes a baseline number of facilities to be reviewed each year and how often individual facilities should be inspected.
3. Establish and promulgate procedures for taking corrective action on deficiencies identified during inspections of non-federal detention facilities.
4. Identify actively used non-federal facilities that have not been reviewed in the last 3 fiscal years and prioritize these inspections as appropriate.
5. Develop a mechanism to track and monitor its inspection activities accurately and adequately in order to assist in scheduling inspections, identifying facilities in need of inspections, and analyzing the results of inspections.
6. Determine if private facility contracts should be modified to allow for less comprehensive inspections for contract compliance of facilities repeatedly receiving acceptable ratings.

We recommend that the ODAG:

7. Review the policies and procedures established by the USMS and ensure that policies related to the inspection of non-federal detention facilities are congruent throughout DOJ and are consistent with DOJ's expectations.

STATEMENT ON INTERNAL CONTROLS

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

Through our audit testing, we did not identify any deficiencies in the OFDT's, USMS's, or BOP's internal controls that are significant within the context of the audit objective and based upon the audit work performed that we believe would affect the OFDT's, USMS's, or BOP's ability to effectively and efficiently operate, to correctly state financial and performance information, and to ensure compliance with laws and regulations. However, we did identify weaknesses related to the processes the OFDT and USMS use to select detention facilities for inspection and the USMS's process for following up on OFDT inspection reports. These matters are discussed in detail within our report.

Because we are not expressing an opinion on the OFDT's, USMS's, or BOP's internal control structure as a whole, this statement is intended solely for the information and use of these DOJ components. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objective, selected transactions, records, procedures, and practices, to obtain reasonable assurance that OFDT, USMS, and BOP management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. OFDT, USMS, and BOP management are responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditees and that were significant within the context of the audit objective:

- 18 U.S.C. § 4013 (2002)

- 28 C.F.R. Part 0 (2006)

Our audit included examining, on a test basis, the OFDT's and USMS's compliance with the aforementioned laws and regulations that could have a material effect on OFDT's or USMS's operations, through examining average daily prisoner population data, collecting and analyzing the OFDT's quality assurance review reports and the USMS's inspection reports, interviewing OFDT, USMS, BOP, and ODAG personnel, and observing two OFDT quality assurance reviews and two USMS IGA facility inspections. Nothing came to our attention that caused us to believe that the OFDT or the USMS was not in compliance with the aforementioned laws and regulations.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of the audit was to determine if DOJ's oversight efforts ensure a safe, secure, and humane environment for federal detainees located in non-federal detention facilities.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

To accomplish our audit objective, we interviewed 27 officials from the OFDT, USMS, BOP, and Department of Homeland Security's Immigration and Custom Enforcement to obtain insight into each component's process for inspecting non-federal detention facilities and their coordination efforts with each other. We also interviewed an ODAG official about DOJ's expectations of the inspection process, as well as the history of DOJ's detention standards and associated working groups. In addition, we reviewed documentation related to the inspections of non-federal detention facilities, including the policies and procedures used by DOJ components in conducting the inspections, as well as the Core Detention Standards and the Federal Performance-Based Detention Standards documents. We also reviewed the American Correctional Association's standards, which DOJ referred to when establishing the basic detention standards for components to use.

To assist in understanding the OFDT's and USMS's inspection processes, we observed two OFDT quality assurance reviews and two USMS IGA facility inspections. Specifically, we observed the OFDT's review of the Maryland Adjustment Correction Center (an OFDT IGA facility) in Baltimore, Maryland, and the Robert Deyton Detention Facility (a private detention facility) in Lovejoy, Georgia. We observed the USMS's inspection of two USMS IGA facilities – the McHenry County Jail in Woodstock, Illinois, and the Porter County Jail in Valparaiso, Indiana.

We also obtained and analyzed data sets associated with the number of non-federal detention facilities used by DOJ to house federal detainees, the average daily population of federal detainees housed in non-federal

detention facilities, and the non-federal detention facility inspections conducted by the OFDT and USMS. These data sets covered FY 2006 through FY 2010. According to OFDT data, between FY 2006 and FY 2010 the OFDT conducted 142 inspections that encompassed 47 unique non-federal detention facilities. We obtained the inspection reports for each of the 142 inspections and reviewed the results, paying particular attention to the results of those facilities that were inspected multiple times in consecutive years.

Using data from the USMS, we identified the IGA facilities inspected by the USMS between FY 2006 and FY 2010. We compared the USMS's inspections to the OFDT's inspections to determine if the OFDT and USMS had inspected the same facility during the same fiscal year. In those instances where the OFDT and USMS inspected the same facility during the same fiscal year, we reviewed each component's inspection report to determine if a facility was rated differently. For purposes of our analysis, we considered the results of the same facility to be inconsistent if the USMS and OFDT gave a facility a different rating on any specific element. For example, if the OFDT indicated that a facility was deficient with the control of contraband and the USMS said the facility was compliant in that area, then we considered the facility to have received an inconsistent evaluation. We also analyzed USMS data to identify any of its IGA facilities housing, on average, at least 200 federal detainees per day that had not been inspected during a given fiscal year of our review period.

We did not perform an independent, overall assessment of the reliability of the data provided because we used the data for informational and contextual purposes to support our overall conclusions. The data did not provide the sole basis of our findings.

In addition, we researched an on-line legal database to determine if DOJ had been subject to litigation associated with housing federal detainees in unsafe, insecure, or inhumane non-federal detention facilities, and we spoke to a DOJ official about DOJ's legal liability. We also discussed with executive management from the USMS and OFDT and a DOJ official DOJ's recent reorganization request that involved transferring the OFDT's functions.

APPENDIX II

UNITED STATES MARSHALS SERVICE RESPONSE



U.S. Department of Justice


United States Marshals Service

Office of the Associate Director for Operations

Alexandria, Virginia 22301-1025

December 7, 2012

MEMORANDUM: Raymond Beaudet
Assistant Inspector General for Audit

FROM: David Harlow 
Associate Director for Operations

SUBJECT: Response to Draft Audit Report:
The Department of Justice's Oversight of
Non-Federal Detention Facility Inspections

This is in response to correspondence from the Office of the Inspector General (OIG) requesting comment on the recommendations associated with the subject audit report.

We have reviewed the seven recommendations contained in the draft report and our responses to Recommendations 1-6 are attached. Recommendation 7 is directed at the Office of the Deputy Attorney General.

We are pleased to report that actions for many of the recommendations contained in the draft report are already underway. Should you have any questions or concerns regarding this response, please contact Isabel Howell, Audit Liaison, at 202-307-9744.

Attachments

cc: Louise Duhamel
Acting Director, Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

Isabel Howell
External Audit Liaison
United States Marshals Service

USMS Response to OIG Draft Report
Audit of the Department of Justice's Oversight
of Non-Federal Detention Facility Inspections

Recommendation 1: Establish and promulgate guidance on the standards to use when conducting inspections of non-federal detention facilities and the depth to which these inspections will be conducted.

USMS Response (Concur): With the merger of the operations of the Office of the Federal Detention Trustee (OFDT) within the USMS, management will be adopting a more strategic approach to consolidated detention operations, including inspections of non-federal detention facilities, with the goal of maximizing the efficient and effective use of detention resources. The Prisoner Operations Division (POD) has developed a project plan, consistent with USMS strategic initiatives,¹ to enhance and refine uniform monitoring policies and procedures and assess and update the current Federal Performance Based Detention Standard (FPBDS).

Recommendation 2: Establish and promulgate guidance for a risk-based selection process that includes a baseline number of facilities to be reviewed each year and how often individual facilities should be inspected.

USMS Response (Concur; with clarification): With the merger of the operations of the OFDT within the USMS, management will be adopting a more strategic approach to consolidated detention operations, including inspections of non-federal detention facilities, with the goal of maximizing the efficient and effective use of detention resources. Consistent with USMS strategic initiatives,² USMS will review and if necessary refine parameters for facility reviews, including the frequency of reviews, supported by risk-based methodologies.

Recommendation 3: Establish and promulgate procedures for taking corrective action on deficiencies identified during inspections of non-federal detention facilities.

USMS Response (Concur; with clarification): With the merger of the operations of the OFDT within the USMS, management will be adopting a more strategic approach to consolidated detention operations, including inspections of non-federal detention facilities, with the goal of maximizing the efficient and effective use of detention resources. The USMS will review and refine existing procedures to mitigate risk identified through the review process, to include sharing best practices and identification of emerging trends.

Recommendation 4: Identify actively used non-federal facilities that have not been reviewed in the last 3 fiscal years and prioritize these inspections as appropriate.

USMS Response (Concur): With the merger of the operations of the OFDT within the USMS, management will be adopting a more strategic approach to consolidated detention operations, including inspections of non-federal detention facilities, with the goal of maximizing the

¹ Strategy 3.3.1 Establish the parameters of IGA reviews; USMS Strategic Plan: 2012-2016.

² Strategy 3.3.1 Establish the parameters of IGA reviews; USMS Strategic Plan: 2012-2016.

efficient and effective use of detention resources. The USMS will identify all facilities that have not been reviewed in the past three years and will assess whether a review will be initiated in FY2013.

Recommendation 5: Develop a mechanism to track and monitor its inspection activities accurately and adequately in order to assist in scheduling inspections, identifying facilities in need of inspections, and analyzing the results of inspections.

USMS Response (Concur): With the merger of the operations of the OFDT within the USMS, management will be adopting a more strategic approach to consolidated detention operations, including inspections of non-federal detention facilities, with the goal of maximizing the efficient and effective use of detention resources. The USMS has developed a project plan, consistent with USMS strategic initiative 3.3.2,³ which will likely expand upon the current OFDT automated Facility Review Management System (FRMS), in order to enhance tracking, scheduling, and analysis of facility reviews.

Recommendation 6: Determine if private facility contracts should be modified to allow for less comprehensive inspections for contract compliance of facilities repeatedly receiving acceptable ratings.

USMS Response (Concur): With the merger of the operations of the OFDT within the USMS, management will be adopting a more strategic approach to consolidated detention operations, including inspections of non-federal detention facilities, with the goal of maximizing the efficient and effective use of detention resources. The USMS has developed a project plan, consistent with USMS strategic initiative 3.3.1,⁴ which will include the evaluation of facility review requirements with respect to contract compliance and frequency of reviews.

³ Strategy 3.3.2 Automate the IGA review process to increase standardization, meet applicable regulations and laws, and target areas for improvement; USMS Strategic Plan: 2012-2016.

⁴ Strategy 3.3.1 Establish the parameters of IGA reviews; USMS Strategic Plan: 2012-2016.

OFFICE OF THE DEPUTY ATTORNEY GENERAL RESPONSE



U.S. Department of Justice

Office of the Deputy Attorney General


Washington, D.C. 20530

December 19, 2012

MEMORANDUM

TO: Raymond J. Beaudet
Assistant Inspector General for Audit
U.S. Department of Justice

THROUGH: Carol S. Taraszka
Regional Audit Manager
Chicago Regional Audit Office
Office of the Inspector General

FROM: Armando O. Bonilla 
Senior Counsel to the Deputy Attorney General

SUBJECT: Draft Audit Report-The Department of Justice's
Oversight of Non-Federal Detention Facility Inspections

The Office of the Deputy Attorney General (ODAG), has reviewed the October 18, 2012 draft audit report issued by the Office of the Inspector General (OIG) as well as the response submitted by the U.S. Marshals Service (USMS) on December 7, 2012. The purpose of this memoranda is to respond to the sole recommendation directed to ODAG:

7. **Review the policies and procedures established by the USMS and ensure that policies related to the inspection of non-federal detention facilities are congruent throughout DOJ and are consistent with DOJ's expectations.**

ODAG concurs with this recommendation. As stated by USMS throughout its December 7, 2012 response: "With the merger of the operations of the Office of the Federal Detention Trustee (OFDT) within the USMS, management will be adopting a more strategic approach to consolidated detention operations, including inspections of non-federal detention facilities, with the goal of maximizing the efficient and effective use of detention resources." As the OFDT-USMS merger continues to be implemented, ODAG will review the policies and

procedures established by USMS to ensure that policies related to the inspection of non-federal detention facilities are congruent throughout DOJ and are consistent with DOJ's expectations.

cc: Eben Morales, USMS Acting Associate Director for Operations
Donald O'Hearn, USMS Chief of Staff

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

The OIG provided a draft of this audit report to the USMS and the ODAG. The USMS's response is incorporated in Appendix II of this final report, and the ODAG's response is incorporated in Appendix III. The following provides the OIG analysis of the responses and summary of actions necessary to close the report.

Recommendation Number:

1. **Resolved.** The USMS concurred with our recommendation to establish and promulgate guidance on the standards to use when conducting inspections of non-federal detention facilities and the depth to which these inspections will be conducted. The USMS stated in its response that USMS management will adopt a more strategic approach to consolidate detention operations with the merger of the OFDT's operations into the USMS. The USMS stated that the strategic approach will include a review of the process for inspecting non-federal detention facilities with the goal of maximizing the efficient and effective use of detention resources. The USMS also stated that it developed a project plan to enhance and refine uniform monitoring policies and procedures, as well as to assess and update the current Federal Performance-Based Detention Standards.

This recommendation can be closed when the USMS provides evidence that it has established and promulgated guidelines on the standards to use when conducting inspections of non-federal detention facilities and the depth to which these inspections will be conducted. The USMS should also provide a copy of the project plan developed by the USMS Prisoner Operations Division.

2. **Resolved.** The USMS concurred with our recommendation to establish and promulgate guidance for a risk-based selection process that includes a baseline number of facilities to be reviewed each year and how often individual facilities should be inspected. The USMS stated in its response that USMS management will adopt a more strategic approach to consolidate detention operations with the merger of the OFDT's operations into the USMS. The USMS further stated that it will review the parameters used for selecting facilities to inspect, including the frequency of the inspections, and will revise those

parameters if necessary to ensure the selection process uses risk-based methodologies.

This recommendation can be closed when we receive evidence that the USMS has established and promulgated guidance for a risk-based selection process that includes a baseline number of facilities to be reviewed each year and how often individual facilities should be inspected.

3. **Resolved.** The USMS concurred with our recommendation to establish and promulgate procedures for taking corrective action on deficiencies identified during inspections of non-federal detention facilities. The USMS stated in its response that USMS management will adopt a more strategic approach to consolidate detention operations with the merger of the OFDT's operations into the USMS. The USMS further stated that it will review and refine existing procedures to mitigate risks identified through the review process, including the sharing of best practices and the identification of emerging trends.

This recommendation can be closed when the USMS provides evidence that it has established and promulgated procedures for taking corrective action on deficiencies identified during inspections of non-federal detention facilities.

4. **Resolved.** The USMS concurred with our recommendation to identify actively used non-federal detention facilities that have not been reviewed in the last 3 fiscal years and prioritize these inspections as appropriate. The USMS stated in its response that USMS management will adopt a more strategic approach to consolidate detention operations with the merger of the OFDT's operations into the USMS. The USMS further stated that it will identify all facilities that have not been reviewed in the past 3 years and will assess whether a review will be initiated in FY 2013.

This recommendation can be closed when the USMS provides evidence that it reviewed the inspections conducted of actively used facilities and identified any non-federal detention facilities that have not been inspected during the past 3 fiscal years. If such facilities were identified, please provide evidence that the USMS prioritized inspections of these facilities as appropriate.

5. **Resolved.** The USMS concurred with our recommendation to develop a mechanism to track and monitor its inspection activities accurately

and adequately in order to assist in scheduling inspections, identifying facilities in need of inspections, and analyzing the results of inspections. The USMS stated in its response that USMS management will adopt a more strategic approach to consolidate detention operations with the merger of the OFDT's operations into the USMS. The USMS further stated that it has developed a project plan and that the plan will likely expand upon the OFDT's automated Facility Review Management System to enhance tracking, scheduling, and analysis of facility reviews.

This recommendation can be closed when the USMS provides evidence that it has developed and is using a mechanism to accurately and adequately track and monitor its inspection activities to assist in scheduling inspections, identifying facilities in need of inspections, and analyzing the results of inspections.

6. **Resolved.** The USMS concurred with our recommendation to determine if private facility contracts should be modified to allow for less comprehensive inspections for contract compliance of facilities repeatedly receiving acceptable ratings. The USMS stated in its response that USMS management will adopt a more strategic approach to consolidate detention operations with the merger of the OFDT's operations into the USMS. The USMS further stated that it has developed a project plan and that the plan will include an evaluation of facility review requirements regarding contract compliance and the frequency of reviews.

This recommendation can be closed when the USMS provides documentation on its determination if private facility contracts should be modified to allow for less comprehensive inspections for contract compliance of facilities repeatedly receiving acceptable ratings.

7. **Resolved.** The ODAG concurred with our recommendation to review the policies and procedures established by the USMS and ensure that policies related to the inspection of non-federal detention facilities are congruent throughout DOJ and are consistent with DOJ's expectations. The ODAG stated in its response that as the merger of the OFDT's operations within the USMS continues to be implemented, the ODAG will review the policies and procedures established by the USMS. The ODAG also stated that it will ensure the established policies are congruent throughout DOJ and are consistent with DOJ's expectations.

This recommendation can be closed when the ODAG provides evidence that it has reviewed the USMS's established policies and procedures

and that the ODAG has ensured the policies related to the inspection of non-federal detention facilities are congruent throughout DOJ and are consistent with DOJ's expectations.