

Department of Homeland Security **Office of Inspector General**

The Performance of 287(g) Agreements FY 2012
Follow-Up





OFFICE OF INSPECTOR GENERAL
Department of Homeland Security


Washington, DC 20528 / www.oig.dhs.gov

September 25, 2012

MEMORANDUM FOR: Timothy Moynihan
Assistant Director
Office of Professional Responsibility
Immigration and Customs Enforcement

Gary Mead
Executive Associate Director
Enforcement and Removal Operations
Immigration and Customs Enforcement

Radha Sekar
Acting Executive Director
Management and Administration
Immigration and Customs Enforcement

FROM: Deborah L. Outten-Mills 
Acting Assistant Inspector General for Inspections

SUBJECT: *The Performance of 287(g) Agreements FY 2012 Follow-Up*

Attached for your information is our final letter report, *The Performance of 287(g) Agreements FY 2012 Follow-Up*. We incorporated the formal comments from Immigration and Customs Enforcement in the final report.

The report contains two recommendations aimed at improving the 287(g) program operations. Your office concurred with both recommendations. As prescribed by the Department of Homeland Security Directive 077-1, Follow-Up and Resolutions for the Office of Inspector General Report Recommendations, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation



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responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Major contributors to this report are Dagmar Firth, Senior Inspector; Jasmine Davis, Inspector; and Brendan Bacon, Inspector.

Please call me with any questions, or your staff may contact Dagmar Firth, Senior Inspector, at (202) 254-4045.

Attachment



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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 Department of Homeland Security's Immigration and Customs Enforcement (ICE) is authorized to enter into memorandums of agreement (MOAs) that describe the terms and conditions for participating law enforcement agency (LEA) personnel to function as immigration officers. MOAs also designate the 287(g) program model for each participating agency.³ As of August 2012, ICE had 64 MOAs in 24 States, with 35 Detention Models, 20 Task Force Officer Models, and 9 Joint Models.⁴

ICE Enforcement and Removal Operations (ERO) maintains day-to-day supervision of the 287(g) program. Within the ICE Office of Professional Responsibility (OPR), the 287(g) Inspections Unit assesses 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. The results of 287(g) inspection reviews provide ICE management with information on the administration of the program by local ICE offices and LEAs.

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*, *The Performance of 287(g) Agreements Report Update*, and *The Performance of 287(g) FY 2011 Update*. In addition, we assessed the 287(g) Inspections Unit's continued efforts to evaluate conformance with MOAs between local ICE offices and LEAs.

Since our initial 287(g) report in March 2010, ICE has made significant progress in implementing our recommendations. To close a recommendation, we must agree with the actions ICE has taken to resolve our concerns. Of the 62 total recommendations

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

² Codified at 8 U.S.C. 1357(g).

³ Models include the Task Force Officer Model; the Detention Model; and the Joint Model, which is a combination of both.

⁴ In June 2012, ICE terminated several of the Arizona Law Enforcement Agency agreements. Four of these were terminated in their entirety, while three retained their Jail Enforcement authority.



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included in our prior reports, 60 have been closed based on corrective action plans and supporting documentation provided by ICE.

As part of this review, we identified staffing and budgetary issues that need to be addressed to further enhance ICE's ability to achieve program objectives.

ICE Needs To Continue Efforts To Implement Remaining OIG Recommendations

Our March 2010 report, *The Performance of 287(g) Agreements*, included 33 recommendations for ICE to strengthen management controls and improve its program oversight. Based on our review of the corrective action plan and supporting documentation provided by ICE, we have closed all recommendations for this report.

The Performance of 287(g) Agreements Report Update, dated September 2010, included 16 recommendations related to (1) management controls and accountability over 287(g) program funding, and (2) achieving goals for removing criminal aliens who pose a threat to public safety. Based on our analysis of documentation provided by ICE, we have closed all recommendations in this report.

The Performance of 287(g) Agreements FY 2011 Update, dated September 2011, included 13 recommendations for ICE to provide training for inspectors, implement comprehensive analytical tools for the inspections review process, and revise MOAs with LEAs to ensure an understanding of 287(g) program requirements. Based on our analysis of the documentation provided by ICE, we have closed 11 recommendations.

Corrective actions that ICE has planned or taken for these recommendations include the following:

- Developing training materials for program operations;
- Establishing directives to ensure the suitability of 287(g) officers;
- Improving the review process for extending or terminating MOAs with LEAs;
- Developing guidance to standardize communications between ICE supervisors and 287(g) officers;
- Establishing a process to determine whether 287(g) operations are meeting 287(g) goals; and
- Developing procedures to ensure that OPR Inspection Reports are distributed to field offices in a timely manner.

For the two open recommendations described in appendix C, ICE provided corrective action plans and supporting documentation. These recommendations can be closed pending our receipt and review of documents, as indicated in the ICE response.



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287(g) Inspections Unit Operations Have Been Improved

Our September 2011 report, *The Performance of 287(g) Agreements FY 2011 Update*, identified specific challenges that reduced the effectiveness of the 287(g) review process. As part of this review, we noted improvements in overall 287(g) Inspections Unit operations that strengthen management controls and promote more efficient and effective inspections.

In fiscal year (FY) 2012, OPR developed a staffing model that included permanent team leaders with a broad-based knowledge of 287(g) program operations, inspection procedures, and report writing. Team leaders are also responsible for training new members of the inspection teams and providing guidance to existing members.

OPR established focus reviews that deploy smaller teams to follow up on deficiencies and areas of concern identified during previous inspections. These reviews have minimized the resources needed to determine LEA compliance with program requirements by assessing recommendation follow-up actions.

OPR Staffing Determinations Need To Be Completed and Implemented

In FY 2012, the ICE Office of Human Capital initiated various studies in OPR to address issues that include balancing the workforce, supervisory ratios, and whether current job series classifications accurately reflect the nature of the work performed. For the review of the 287(g) Inspections Unit, the study will determine the appropriate job series classification based on the scope of work, and the type of investigative and other skills needed to perform daily tasks. Its results will be used to help determine how the 287(g) Inspections Unit should be staffed.

As of August 2012, the results of the classification study had not been finalized. Therefore, all hiring efforts have been suspended, leaving several vacant positions. According to OPR officials, discussions of the study have been minimal, and the uncertainty is having a negative effect on employee morale.

The 287(g) Inspections Unit performs a vital role in conducting reviews to assess compliance with MOA requirements. As such, staffing recommendations to be provided by the Office of Human Capital should be finalized and implemented during FY 2013. This will help to ensure the continuity of the 287(g) Inspections Unit's oversight role in providing ICE management with feedback on the administration of the program.



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Language in the FY 2013 Budget Submission Does Not Accurately Reflect the Relationship Between Program Functions

During our fieldwork, we reviewed the FY 2013 ICE Budget Justification submitted to Congress as part of the President's Budget. The justification included a program decrease of \$17 million for realignment and reduction of the 287(g) program. The justification for the reduction stated that "Given the nationwide deployment of the Secure Communities interoperability system by the end of FY 2012, it will no longer be necessary to maintain the more costly and less effective 287(g) program."

Contrary to the relationship between the 287(g) and Secure Communities Programs described in the FY 2013 budget justification, discussions with 287(g) officials indicated that the functions of these programs are distinct and separate. While ICE's removal process includes identifying, interviewing, processing, and removing aliens, Secure Communities only assists with identifying aliens. In contrast, 287(g) officers can identify, interview, and process removable aliens, and are considered a force multiplier for ICE field operations. However, program managers said that underperforming 287(g) agreements that do not provide sufficient benefits should be terminated.

Language in the current budget justification may lead to a misunderstanding of program missions. We are bringing this issue to management's attention without making a recommendation. However, the Office of the Chief Financial Officer needs to ensure that sufficient explanations of program functions are provided in budget submission documentation. This will minimize the potential for inappropriate revisions to budget allocations based on a misunderstanding of relevant program information.

Conclusion

This review focused on the status of recommendations from our prior 287(g) reviews, and efforts by the OPR 287(g) Inspections Unit to assess compliance with MOAs. ICE has provided corrective action plans that satisfy 60 of the 62 recommendations from our prior reports. In addition, OPR has continuously improved its operational capabilities by enhancing its staffing strategy and modifying the review structure to include follow-up assessments.

Results of the classification study conducted by the Office of Human Capital need to be finalized and implemented during FY 2013 to ensure that the 287(g) Inspections Unit can continue to fulfill its operational goals. In addition, we identified language in the FY 2013 budget submission to Congress that could lead to a misinterpretation of 287(g)



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and Secure Communities functions. As a result, the 287(g) program could be subjected to budget reductions based on a misunderstanding of program functions.

Recommendation

We recommend that the Executive Associate Director, Office of Management and Administration:

Recommendation #1:

Provide the Office of Professional Responsibility with the classification study results by December 31, 2012.

We recommend that the Assistant Director, Office of Professional Responsibility, Immigration and Customs Enforcement:

Recommendation #2:

If needed, develop a transition plan to complete any reclassification efforts during FY 2013.

Management Comments and OIG Analysis

Recommendation #1:

ICE Response: ICE concurs. The ICE Office of Human Capital has been working with OPR management to gather information to develop solid position descriptions that accurately reflect the inspection work performed in OPR. The position descriptions have not been finalized at this time, but we see no reason why the results cannot be provided to OPR by December 31, 2012.

OIG Analysis: Pending notification that the classification study results have been provided to OPR, this recommendation remains unresolved and open.

Recommendation #2:

ICE Response: ICE concurs. If the final results indicate that law enforcement officers' coverage is warranted, then the completion and final results may be impacted by the required DHS review, as necessary.



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OIG Analysis: Pending receipt of a transition plan to complete reclassification efforts, this recommendation remains unresolved and open.



Appendix A

Objectives, Scope, and Methodology

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 review is congressionally mandated by the *Consolidated Appropriations Act, 2012* (Public Law 112-74), requiring that DHS OIG review the delegation of law enforcement authority agreements that ICE enters into pursuant to section 287(g) of the *Immigration and Nationality Act* (8 U.S.C. 1357(g)). Our objectives were to assess (1) ICE's progress in addressing the recommendations in our reports *The Performance of 287(g) Agreements*, OIG-10-63; *The Performance of 287(g) Agreements Report Update*, OIG-10-124; and *The Performance of 287(g) FY 2011 Update*, OIG-11-119; and (2) ICE's 287(g) Inspections Unit's continued efforts to assess partnering LEAs' compliance with 287(g) MOAs.

We conducted fieldwork from June to August 2012, and interviewed OPR and ERO officials and OPR 287(g) inspectors. We also reviewed ICE's actions to address recommendations from our prior reviews of 287(g) operation.

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.



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Appendix B
Management Comments to the Draft Letter 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 12, 2012

MEMORANDUM FOR: Deborah L. Outten-Mills
Acting 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 2012 Update" dated August 28, 2012

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the draft report. We have reviewed and concur with the two recommendations.

1. Provide the Office of Professional Responsibility (OPR) with the classification study results by December 31, 2012.
 - ICE OHC has been working with OPR management to gather information to develop solid position descriptions that accurately reflect the inspection work performed in OPR. The position descriptions have not been finalized at this time, but we see no reason why the results cannot be provided to OPR by December 31, 2012.
2. If needed, develop a transition plan to complete any reclassification efforts during FY 2013.
 - If the final results indicate that law enforcement officer (LEO) coverage is warranted, then the completion and final results may be impacted by the required DHS review, as necessary.

ICE will continue working to resolve all identified items.

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.

www.ice.gov



Appendix C

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

Summary:

33 Total Recommendations

33 Closed

0 Resolved and Open

0 Unresolved and Open

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

Summary:

16 Total Recommendations

16 Closed

0 Resolved and Open

0 Unresolved and Open

Status of Recommendations from OIG Report OIG-11-119, *The Performance of 287(g) Agreements FY 2011 Update*, dated September 2011

Summary:

13 Total Recommendations

11 Closed

2 Resolved and Open

0 Unresolved and Open

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.



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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.

ICE Response Update: 287(g) Unit is reviewing the MOA language and preparing a description of the compliance assessment plan.

OIG Analysis Update: 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.

ICE Response Update: MOA language modification suggestions will be forwarded to OPLA based on the assessment in recommendation #8.

OIG Analysis Update: This recommendation is **resolved and open** pending our receipt and review of the new language modifications for the MOA.



Appendix D

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