

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

The Performance of 287(g) Agreements FY 2013 Update





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

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

September 5, 2013

MEMORANDUM FOR:

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

Thomas Homan
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 2013 Update
OIG Project No. 13-064-ISP-ICE

Attached for your information is our final letter report, *The Performance of 287(g) Agreements FY 2013 Update*. We incorporated the formal comments from Immigration and Customs Enforcement in the final report.

The report contains no recommendations.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

The major contributor to this report is Dagmar Firth, Senior Inspector.

Please call me with any questions, or your staff may contact Tatyana Martell, Senior Inspector, at 202-254-4220.

Attachment



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. As of July 2013, ICE had 39 MOAs in 19 States, a reduction from the 64 MOAs in 24 States during fiscal year 2012. As of January 2013, all Task Force Officer Models have been discontinued.

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*, *The Performance of 287(g) Agreements FY 2011 Update*, and *The Performance of 287(g) Agreements FY 2012 Follow-Up*.

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. All 64 recommendations included in our prior reports have been closed based on corrective action plans and supporting documentation provided by ICE.

¹ Public Law (P.L.) 104-208, Sec. 133, September 30, 1996.

² Codified at 8 U.S.C. § 1357(g).



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ICE Has Complied with All Office of Inspector General 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 in 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 all recommendations in this report.

The Performance of 287(g) Agreements FY 2012 Follow-Up, dated September 2012, included one recommendation for the ICE Office of Management and Administration to provide the final classification study to OPR and one recommendation for ICE OPR to provide a transition plan for the implementation of the classification plan. Based on our analysis of the documentation, we have closed both recommendations.

ICE has planned or implemented the following corrective actions to close the recommendations:

- Developing an assessment of the previous MOA;
- Developing a new MOA; and
- Developing a transition plan for phasing out the 1811 job series in the OPR 287(g) Inspections Unit.

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 and implemented corrective action plans that satisfy all 64 recommendations from our prior four reports.



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 and Further Continuing Appropriations Act, 2013* (P.L. 113-6), 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 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; *The Performance of 287(g) Agreements FY 2011 Update*, OIG-11-119; and *The Performance of 287(g) Agreements FY 2012 Follow-Up*, OIG-12-130.

We conducted fieldwork during June 2013 and met with OPR and ERO officials. We also reviewed ICE's actions to address recommendations from our prior reviews of 287(g) operations.

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



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Appendix B
Management Comments to the Draft Letter Report

Office of the Director

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



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

August 19, 2013

MEMORANDUM FOR: Deborah L. Outten-Mills
Acting Assistant Inspector General for Inspections
Office of Inspector General

FROM: Radha C. Sekar 
Acting Executive Associate Director
Management and Administration

SUBJECT: Management Response to OIG Draft, "The Performance of 287(g)
Agreements – FY 2013 Update", dated July 19, 2013

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the subject draft report. We have reviewed and concur with the results of the report, which indicates that:

- OIG considers the remaining four open recommendations from the two prior reports resolved and closed; and,
- ICE has provided and implemented corrective action plans that satisfy all 64 recommendations from the OIG's prior four reports.

ICE would like to thank the OIG for its exceptional professionalism during this review and especially wants to acknowledge the efforts of OIG Senior Inspector Dagmar Firth and OIG Inspector Tatyana Martell for their constructive assistance in working with us to resolve the remaining open recommendations.

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

www.ice.gov



Appendix C

Status of Recommendations from Prior OIG Reports

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 Report 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

13 Closed

0 Resolved and Open

0 Unresolved and Open



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

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

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

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

ICE Response Update: 287(g) Inspections 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.

ICE Response Update June 25, 2013: ICE provided an executive summary describing the language changes for the new template and the considerations that went into making these changes. ICE requests this recommendation be considered closed.

OIG Analysis Update: Based on our review of the documentation we consider this recommendation **resolved and closed**.

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 subsequent language modifications to 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 Office of Principal Legal Advisor based on the assessment in recommendation #8.



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

ICE Response Update June 25, 2013: Attached you will find the 287(g) MOA final template. This template is currently under review by participating LEAs for signature.

OIG Analysis Update: Based on our review of the MOA template, we consider this recommendation **resolved and closed**.

Status of Recommendations from OIG Report OIG-12-130, *The Performance of 287(g) Agreements FY 2012 Follow-Up*, dated September 2012

Summary:

2 Total Recommendations

2 Closed

0 Resolved and Open

0 Unresolved and Open

Recommendation #1: Provide the Office of Professional Responsibility with the classification study results by December 31, 2012.

ICE Response: ICE concurs with Recommendation #1. 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.

ICE Response Update: The ICE Office of Human Capital (OHC) review was completed. The review supports the continued use of the temporary promotion for the OPR nonsupervisory GS-1811-14 workforce. However, as part of the analysis OHC reviewed the OPR Division workforce and determined the GS-0300 and GS-1801 non-law-enforcement job series are better aligned with the Division's core functions and mission than the GS-1811 job series. ICE requests this recommendation be considered closed.



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OIG Analysis Update: Based on our review of the documentation, we consider this recommendation **resolved and closed**.

Recommendation #2: If needed, develop a transition plan to complete any reclassification efforts during FY 2013.

ICE Response: ICE concurs with Recommendation #2. 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.

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

ICE Response Update: As a result of the analysis conducted by the Office of Human Capital, it was determined that GS-1811 Criminal Investigators were not an appropriate job series for assignment within the OPR Inspections Division, to include the 287(g) Inspections Unit. As a result, OPR has created a new position description for the GS-1801 General Investigator series in order to assume the role currently performed by GS-1811s. Two separate vacancy announcements have recently closed and OPR will begin to review the candidates and make potential selections upon receipt of the certifications of eligible lists from OHC. As the new positions are brought onboard and trained, OPR will continue to transition GS-1811s to the OPR Investigations Division, as well as facilitate rotations to Homeland Security Investigations. This redistribution of resources will create a new, competitive, experienced organization better suited for the unique challenges and ever-changing environment within OPR. With the completion of this effort OPR will be repositioned for a long-term success. ICE requests this recommendation be considered closed.

As of June 25, 2013, ICE OPR provided additional information.

OIG Analysis Update: Based on our review of the information provided as part of the OPR transition of its 1811 series inspectors, we consider this recommendation **resolved and closed**.



Appendix D

Report Distribution

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